Public Utilities

FORTNIGHTLY

December 17, 1942

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

MEMBER OF A VANISHING RA

"MR. HINKLEBY DOESN'T BELIEVE IN PRE-FABRICATED SWITCHBOAR

When I-T-E first pioneered with
enclosed switchgear, the movemen
started which has won over nearly a
like Hinkleby. Most switchgear n
factory assembled, shipped in units
to install, and much of it is by I-T

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Public Utilities Fortnightly

VOLUME XXX *December 17, 1942* NUMBER 13

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

SINCE this will be the last issue of PUBLIC UTILITIES FORTNIGHTLY to be published in 1942 (the next issue will be out January 7th), we wish to take this occasion to extend to all our friends and readers our sincere wish that they enjoy a Merry Christmas and a Happy New Year.

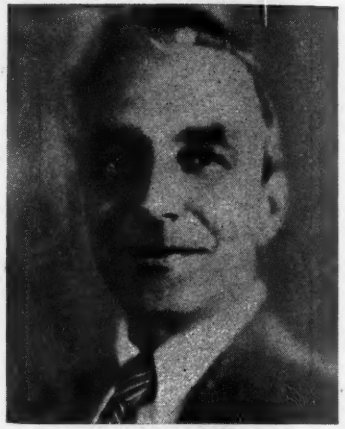
ON the surface, it may seem difficult, if not somewhat futile in these days when the Four Horsemen of the Apocalypse are riding throughout the world, to wish anyone a Merry Christmas and a Happy New Year with a perfectly straight face. But when we compare our position and prospects during this holiday season with the situation in which we found ourselves this time last year, we have every reason to rejoice on the birthday of the Prince of Peace and to look forward with confidence to the year 1943.

A YEAR ago we were still deep in the doldrums into which we were thrown by the tragic treachery at Pearl Harbor. Our allies in arms throughout the world, as well as ourselves, were fighting on the defensive. The Swastika was still flying high in Europe and Africa and even threatening to invade western Asia. All of the Orient had suddenly fallen under the menacing shadow of the so-called Rising Sun.

TODAY we look upon our condition with hope and confidence. We cannot assume an early victory. But we can assume a victory. We can look forward to the day when real peace will reign throughout the world and free men will have a right to be happy everywhere.

MUCH of the fighting, effort, and sacrifice remain ahead. Much, we hope, will be accomplished during the year 1943. But, we repeat, we find much more reason than we had a year ago to look our fellow Americans in the eye and say Merry Christmas and a Happy New Year. And so we say it again and again to all who read these pages.

RIGHT after New Year's day, probably the big question mark in the minds of the American people is going to be the performance of the new Congress. The convocation of this Seventy-eighth Congress of the United States may be overshadowed by war news.



JAMES H. COLLINS

The war is giving the gas industry its chance to show what it can really do.

(SEE PAGE 835)

But when we stop to think that this Seventy-eighth Congress will be the one entrusted with the victorious prosecution of the war and, quite possibly, the writing of the peace, it will be seen that its composition is well worth careful analysis.

WE have such an analysis in the opening article in this issue by ANDREW BARNES, a veteran Washington newspaper correspondent, who has followed closely Washington developments, with emphasis on the congressional phase. MR. BARNES' survey approaches the new Congress from the utility angle. One of his obvious points of inquiry is whether the public ownership bloc has lost or gained strength as a result of the recent election.

IT is fairly well known by now, of course, that the antiutility group has lost considerable strength. But just how much and what can still be expected from it? Will the new Congress as a whole be really conservative or merely critical? Will it repeal existing legislation? Will it consider or reject additional reforms? These are questions which MR. BARNES tries to answer, roughly at least, from his knowledge of the background of the new

and old members of the Seventy-eighth Congress.

EVERY now and then something happens in a utility business to take our minds, for a moment, away from the stern realities of the war emergency. Such was the recent experience of the Dallas (Texas) waterworks, which is trying to install a new bimonthly billing system to save man power. City waterworks' officials decided that it would be a good idea to call the public's attention to the change by mailing out blank bill forms to each customer, to which was attached an explanatory message.

THE idea, which did not work in some cases, was to point out to the customers that the bill was blank, but that a duplicate bill would follow covering two months. The trouble was that each blank carried the usual bookkeeping number. Some Dallas customers began remitting the amount of the bookkeeping number at the rate of ten a day.

CITY officials were surprised when the money started to roll in; but after that there was nothing much that could be done about it, except counter-educational measures through the press and radio. For example, one customer sent in 35 cents because his bookkeeping number is 35. The reply that really got a smile was from a Dallas banker who mailed in his check for $17.20, together with a little note: "I wish you would check my meters, because this amount seems a little high."

JAMES H. COLLINS, whose article entitled "A Gas Engineer's Dream Comes True" appears on page 835, has seen many men disclose their light to the world, from the days when he was connected with the publicity department of the Ringling Brothers' circus, and the beginnings of the efficiency" movement, when he was writing for *The Saturday Evening Post*. Seeing how it has been done, by men with something of public worth, he urges a conservative and honest publicity for anything of genuine public value.

MR. COLLINS was born in Detroit in 1873, educated himself in the printing trade, and as a circus billposter, and taught himself writing before every cow college had courses in special feature writing. At present he lives in Hollywood, where until recently he edited the monthly magazine of the Los Angeles Chamber of Commerce, *Southern California Business*. Among the many eminent men whom he knew through interviews was Thomas A. Edison.

IN this issue we also present another of a series of articles by JOSEPH B. KLAINER on the establishment of cost studies (beginning page 842). MR. KLAINER, who is a New York city consulting engineer specializing in Continuing Property and Original Cost problems, is a graduate of the Massachusetts Institute of Technology ('25) and North Eastern University Law School ('31). He has had considerable experience in special rate case analyses work, both for the private utility industry and regulatory authorities.

JOSEPH B. KLAINER

Continuing property records rightly conducted can save money for utilities.

(SEE PAGE 842)

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

THE capital structure of a water company having a small amount of stock in comparison with total investment in properties to be purchased, in the light of unusual times and the difficulties of forming a utility company of the size under consideration, was discussed by the Arkansas Department of Public Utilities. (See page 321.)

TELEPHONE rates for interstate and intrastate service were held discriminatory by the Utah commission, which considered reasonableness of return as a whole, effect of the investigation on the war effort of the company involved, and the sufficiency of a showing of damage or prejudice resulting from present interstate and intrastate toll schedules. (See page 332.)

A GAS rate increase in the form of a coal surcharge was passed upon by the New York commission, which considered such items as contributions in aid of construction, capital amortization, capital charges, administration expenses, and adequacy of return for the gas company. (See page 374.)

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions published in full text, pages 321–384, from 45 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

JOSEPH B. EASTMAN
Director, Office of Defense Transportation.

"Transportation is more than the handmaiden, it is the 100 per cent partner of production."

RAYMOND MOLEY
Associate editor, Newsweek.

"The New Deal has led people to expect so much that they tend to blame it for every discomfort."

DAVID C. PRINCE
Vice president, General Electric Company.

"From 1,000-ton power generators to tiny radio tubes, the electrical industry is furnishing the 'know how' to meet military needs."

THOMAS A. BECK
President, Crowell-Collier Publishing Company.

"American newspapers since Pearl Harbor have given the American public the best symposium of indignation ever presented to our public."

DAWSON OLMSTEAD
Chief Signal Officer, U. S. Army.

". . . the man responsible for a bomber's radio is contributing as much to the winning of the war as the bombardier who drops the bombs."

EDITORIAL STATEMENT
The New York Times.

"It is absurd to suppose that our inflationary problem could be solved even by taking away every cent of income from the highest-paid executives."

FRANKLIN D. ROOSEVELT

"I can say one thing about our plans: They are not being decided by the typewriter strategists who expound their views in the press or on the radio."

VOLNEY B. FOWLER
Public relations director, General Engine Group, General Motors Corporation.

"All inroads of other media notwithstanding, it remains true that most Americans base their opinions and convictions largely upon what they have read in 7- or 8-point type in 2-inch lines beneath a headline in larger and blacker letters made supremely accessible by doorstep or mail box delivery."

H. B. GEAR
Vice president, Commonwealth Edison Company.

"The present capacity of all our electric power generating plants is more than 60,000,000 kilowatts. To get an idea of how much electricity that is, . . . picture in your mind a chain of 100-watt light bulbs. The U. S. power plants could light enough of those bulbs to extend that chain almost two and one-half times around the earth at the equator."

ARCHIBALD MACLEISH
Librarian of Congress.

"The press must police itself, not only to avoid necessity of a policing by government which neither government nor the press desires, but also to put itself in a position to perform the duties it has traditionally undertaken in American life."

WILLIAM M. JEFFERS
Rubber director.

"I'm not going to put myself in a position where it is said of me that I lack the intelligence and guts to do a job. Too many haven't done their job because they were afraid of some committee or pressure group. I'm not going to work on that basis."

J. J. PELLEY
President, Association of American Railroads.

"America's war could not be sustained without the contribution of its newspapers any more than it could without the service of its railroads. Fortunately America has both newspapers and railroads which get in the scrap, figuratively and literally."

GUY A. RICHARDSON
Director, ODT Division of Local Transport.

"We cannot afford to take the chance of denying our soldiers in the field adequate arms and tools of war in order to suit the fancy of some [transit] operators who wish to handle increased loads through the simple process of giving a purchase order to a zealous bus salesman."

EDITORIAL STATEMENT
The Wall Street Journal.

"Whatever may be the effect of the defense emergency upon all other types of enterprises, public and private, it seems that it is not to interfere with the antiprivate utility war which has been so prominent and continuous a feature of administration policy in the last decade."

ROBERT R. NATHAN
Chairman, Planning Committee, War Production Board.

"I should much prefer more spending by individuals and by private enterprises, and less spending by government, but rather than unemployment and depression and chaos, and threats to the continued existence of our economic system, I should prefer large-scale government spending."

E. A. LOCKE, JR.
Assistant to the chairman, War Production Board.

"Until recently we have been inclined to force inadequate transportation facilities into a pattern of rapidly expanding production. When we quite squarely reverse that procedure and schedule production against available shipping, we see the imperatives of this war stripped to their fundamentals."

EDITORIAL STATEMENT
Public Service Magazine.

"If it is right and proper for the government to produce and sell power, it is right and proper for the government to produce and sell food, clothes, entertainment, newspapers, and everything else. If the right of a man to enter one field of private enterprise is destroyed, the right of a man to enter any field of private enterprise can be destroyed."

R&IE

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Switching Equipment

ING THE ARTERIES OF INDUSTRY

Now, when War Production makes prior claim to the manufacturer's output, is the time to seek quality and service as never before.

It's good business—Patriotic business—to demand the maximum service from available raw materials.

With your sympathetic cooperation in plans and specifications, R&IE can help more by thereby eliminating many of the occasional production delays.

As you seek quality and Service, remember that R&IE has been a

SPECIALIST

for 31 years—in problems on Indoor and Outdoor SWITCHING EQUIPMENT.

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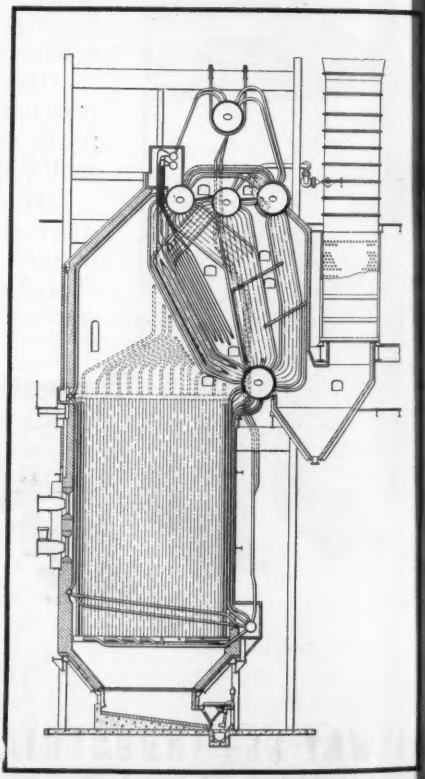
AILWAY *and* INDUSTRIAL ENGINEERING COMPANY

GREENSBURG, PA. . . . In Canada—Eastern Power Devices Ltd., Toronto

Cooperating 100% *with the War Effort*

another distinguished



One of several similar C-E Units serving the public utility system which produced the record described on the right hand page. Capacity—250,000 lb of steam per hr. Design Pressure—750 psi. Total Steam Temperature—755 F.

Meter Accuracy Means More Revenue

● *Above—Testing a 4" Crest Meter in the N. Y. Meter Testing Station*
● *Right—Testing a 6" Protectus Meter in Service in Rockefeller Center*

A HUNDRED YEARS AGO thousands of New Yorkers flocked to City Hall Park to see the fountain display fed by the newly opened Croton Aqueduct. New Yorkers of that day were proud of their new System, which DeWitt Clinton had outlined in 1833 to deliver 20,000,000 gallons a day.

One hundred years later New York City's water supply system delivers an average of 880,000,000 gallons daily. The City now covers the whole of Manhattan Island and has spread out to include four other boroughs.

Today one of its greatest attractions is Rockefeller Center, business headquarters of thousands and the mecca for additional thousands of visitors. Deep in the sub-basements, never seen by the public, are large meters which record the daily water requirements of this large population.

The original estimate of the water requirements of the RCA building alone contemplated a demand rate of 20,000,000 gallons a day—equal to the original estimated capacity of the Croton System.

This demand would have put such a burden on the present system that engineers devised a way of using water over and over in the cooling and air conditioning systems so that the requirement was cut to 1/3 of the original estimate.

Just what do meters mean to a city like New York? Of the 667,400 connections in New York City, 179,690 are metered, a large percentage in the larger sizes. From these metered services, which consume 22 per cent of the water, the City receives $16,400,000 or 42 per cent of its water revenues. But should these meters under-register as little as 3 or 4 per cent, the City would lose a staggering amount of money.

This is striking proof that meters should be tested regularly and that every city, as does the City of New York, should maintain a thoroughly equipped meter testing shop.

In these days of increasing cost in every phase of our life, the efficient Water Department cannot afford to lose revenues through under-registration of meters. Regular and systematic testing of all meters is the only safeguard against loss.

From the Bettmann Archives

NEPTUNE METER COMPANY
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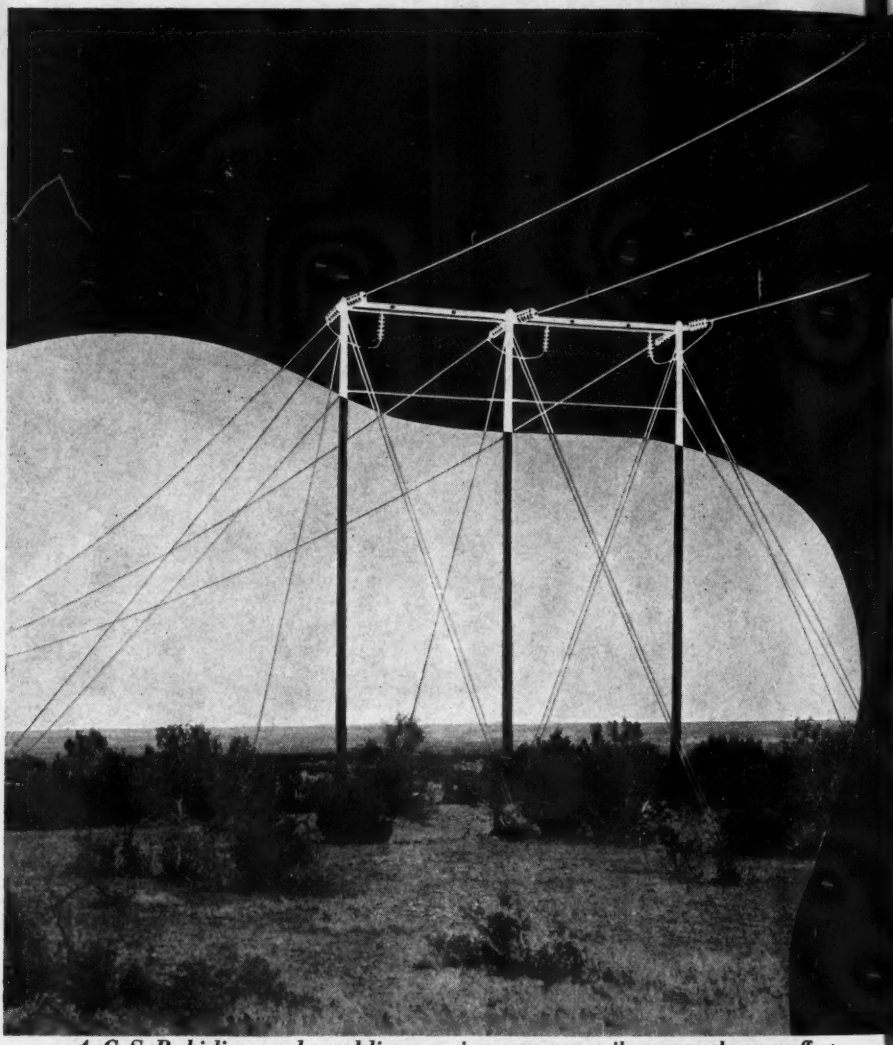
Branch Offices in CHICAGO, SAN FRANCISCO, LOS ANGELES, PORTLAND, ORE., DENVER, DALLAS, KANSAS CITY, LOUISVILLE, ATLANTA, BOSTON.

NEPTUNE METERS, LTD., LONG BRANCH, ONTARIO, CANADA



A. C. S. R. hi-lines and rural lines are important contributors to the war effort.

ALCOA ALUMINUM

A.C.S.R.

A·C·S·R

THE "*Show*" MUST GO ON!

What better rallying-cry could you find for the men who are maintaining your power lines? Hi-lines carrying power to vital war industries, and farm lines feeding the rural production front, all must be kept on their mettle.

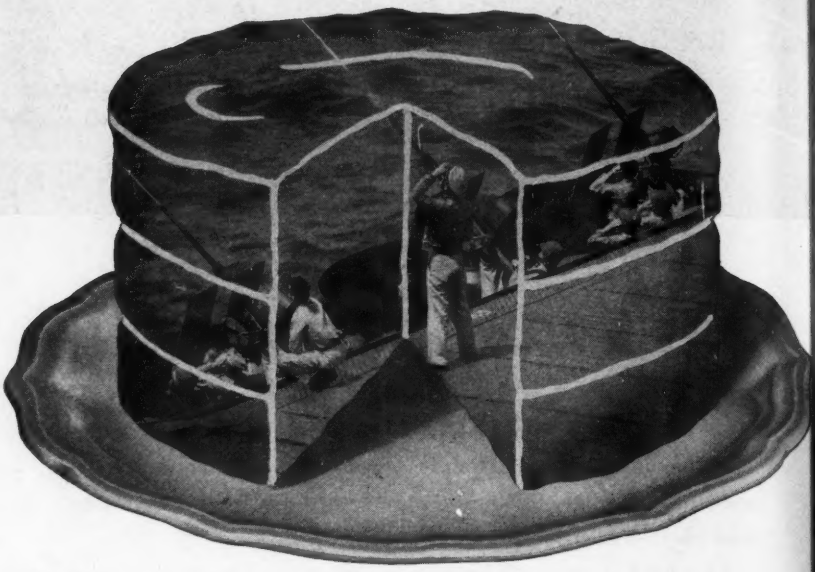
Take the Government's word for it, the country's power lines have got to be equal to the tremendous responsibility being placed on them. This requires proper maintenance, and that means the right materials correctly installed. Ruling P-46 permits you to obtain these materials.

There are places, of course, where substitute materials and methods can keep power lines going "for the duration," without drawing on the limited supply of essentials. Alcoa engineers may be able to suggest such substitutes and can assist in developing your ideas.

Alcoa engineers are always available to advise you on methods of getting the most work out of your A. C. S. R. lines. Write ALUMINUM COMPANY OF AMERICA, 2134 Gulf Building, Pittsburgh, Pennsylvania.

Aluminum Cable Steel Reinforced

ON RURAL POWER LINES AND HI-LINES



New recipe for devil's food cake

Many a devil's food cake would have gone flat except for the correct degree of heat measured out by a Robertshaw Thermostat. But nowadays here at Robertshaw we're measuring heat for devil's food of a different kind—we're making boosters and shells for aircraft and anti-aircraft guns; we're turning out fuses for hand grenades, and primers and ignition cartridges for rockets. Likewise we make instruments for aircraft, and it's all work for which we have been peculiarly fitted during long years in the precision manufacture of Robertshaw Thermostats. What Robertshaw Thermostats we still make are used entirely on Government projects—a work which serves the double object of keeping our research department and engineering division looking toward new models for the coming days of peace.

For High Achievement in the production of war equipment.

ARMY E NAVY

ROBERTSHAW

ROBERTSHAW THERMOSTAT CO., YOUNGWOOD, PA.

PEWRITERS ARE GOING TO WAR
. . . One Out of Every Four

How Can We Make THREE Typewriters Do the Work of FOUR?

That's Easy! use EGRY SPEED-FEEDS

ng lady is right! But she tells only *half* the story. An SPEED-FEED actually steps up the output of typed forms d more, and effects a carbon paper saving that's almost ble. The SPEED-FEED costs only 3c per day and may ed to any make typewriter in less than one minute.

ere are EGRY ALLSET Forms, the single set ll copies interleaved with one-time carbon, for ypewritten or handwritten records. And now out of every four typewriters built since Janu-1935 is going to war, more and more records will e by hand.

tigate these two possibilities. Both gned to speed up the writing of rec- every departmental activity. Dem- ns may be arranged in your own office convenience, and without cost or n. Address Department F-1217.

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The EGRY REGISTER Company
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PERMANENCE

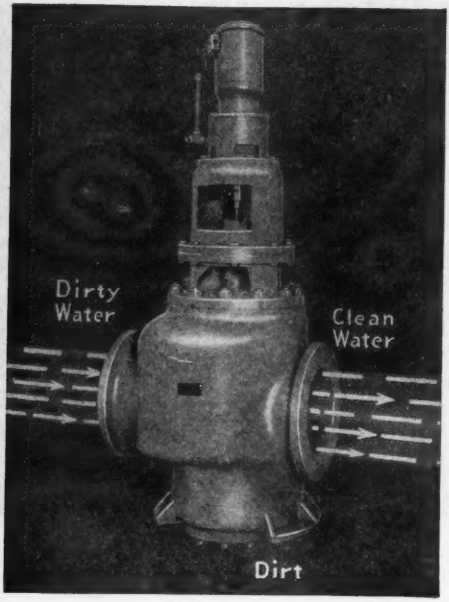
Like the stars, unaffected by time, as they follow in their course with unerring precision, you can depend upon the lasting and reliable performance of Mercoid hermetically sealed mercury type switches. • Mercoid Switches are immune to dust, dirt or corrosion. The contacting surfaces remain ever new after years of service. • You get this extra value in every Mercoid Control without any additional cost.

Although priorities are now necessary, an adequate stock of Mercoid Controls for essential uses has been provided for. We will be glad to advise with you on your present and future requirements.

THE MERCOID CORPORATION, 4213 Belmont Avenue, Chicago, Illinois

Water *without* dirt

without trouble
without cleaning
without stoppin



Elliott self-cleaning strainers are going strong in all the industries that demand clean, dirt-free water. They clear water for cooling bearings, cooling transformers, cooling generator coils, supplying many other needs of widest range.

They make no demands upon anyone's time or attention, these Elliott self-cleaning strainers. They clean themselves, back-flushing the dirt out of section after section, isolated or blanked off by a slowly rotating element. Fibrous matter cannot mat or clog them, either — the design of the straining element provides against that.

They are themselves immune to ordinary trouble. Motor and driving gears are on top, out of harm's way. Lower bearing is water-lubricated, of a cutless design which dirt cannot harm. Operation is smooth, quiet, slow, and almost wearless.

Elliott also makes Twin Strainers for manual cleaning. One chamber always working. Also single strainers, used where occasional time-out for cleaning is permissible.

If you have a straining problem affecting water or any other liquid, ask us to work with you.

ELLIOTT
Self-Cleaning
STRAINERS

ELLIOTT COMPANY

Accessories Department

JEANNETTE, PA.

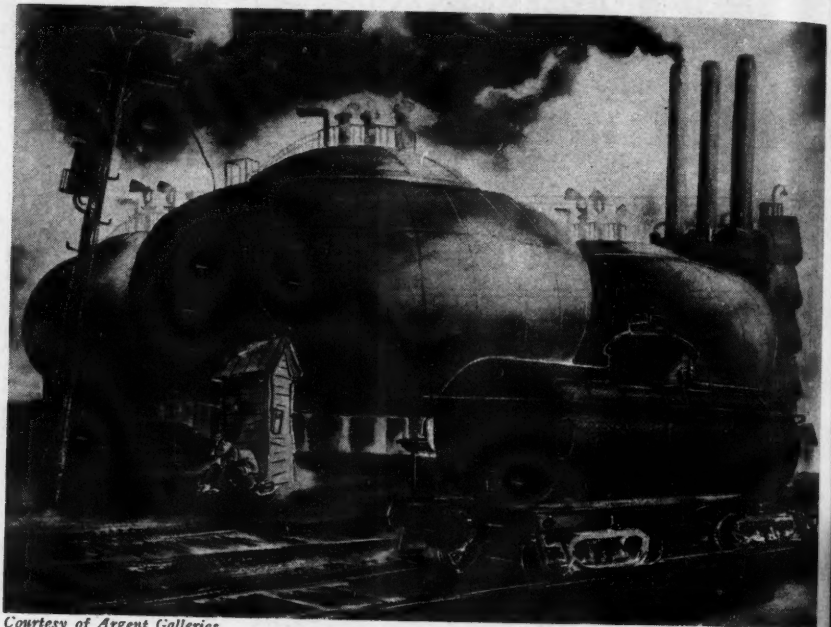
DISTRICT OFFICES IN PRINCIPAL CITIES

Utilities Almanack

Due to war-time travel restrictions, conventions listed are subject to cancellation.

DECEMBER

17	T^h	¶ *League of Wyoming Municipalities will convene, Cheyenne, Wyo., Jan. 5, 1943.*
18	F	¶ *Arizona Municipal League starts meeting, Yuma, Ariz., 1942.*
19	S^a	¶ *Society of Automotive Engineers will hold war production-engineering meeting, Detroit, Mich., Jan. 11, 12, 1943.*
20	S	¶ *Missouri Valley Association will hold industrial engineering conference, Kansas City, Mo., Jan. 13, 14, 1943.*
21	M	¶ *New York State Sewage Works Association will hold meeting, New York, N. Y., Jan. 22, 1943.*
22	T^u	¶ *American Society of Civil Engineers will hold annual meeting, New York, N. Y., Jan. 20–22, 1943.*
23	W	¶ *American Institute of Electrical Engineers will hold winter convention, New York, N. Y., Jan. 25–29, 1943.*
24	T^h	¶ *Pennsylvania State Association of Boroughs will hold meeting, Harrisburg, Pa., Feb., 1943.*
25	F	¶ *Merry Christmas, 1942!*
26	S^a	¶ *Texas Water Works Short School will be held, College Station, Tex., Feb., 1943.*
27	S	¶ *Association of Highway Officials of North Atlantic States will hold session, New York, N. Y., Feb. 17–19, 1943.*
28	M	¶ *American Water Works Association, Canadian Section, will hold meeting, Hamilton, Ont., Canada, Apr. 7–9, 1943.*
29	T^u	¶ *American Economic Association starts meeting, Cleveland, Ohio, 1943.*
30	W	¶ *American Water Works Association, New York Section, holds midwinter war conference, New York, N. Y., 1942.*



Courtesy of Argent Galleries *From Elsie Hafner, N. Y.*

Petroleum Reserve

By Kameron Kent

SPECIAL NOTICE TO SUBSCRIBERS AND ADVERTISERS

DATES OF ISSUANCE

Public Utilities Fortnightly is issued 26 times a year—on every other Thursday. There happen to be 27 alternate Thursdays in 1942. The issue of December 17th, therefore, completes this year's schedule of 26 issues. Accordingly, the issue following that of December 17th will be dated January 7, 1943, and not December 31, 1942, as might otherwise be expected.

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Public Utilities
FORTNIGHTLY

VOL. XXX; No. 13 DECEMBER 17, 1942

What of the 78th Congress?

The national legislative situation resulting from the recent election considered by the author who believes that the new Congress will be under the stern necessity of devoting itself wholly to the war effort by weeding out nonessentials, including a considerable diminution of the government's power policy.

BY ANDREW BARNES

THE month of November, 1942, will stand out in the history of the middle Twentieth Century s one of the most significant periods f its decade; the month when events f great import occurred in the mili- ry and domestic political fields.

It was the "get tough" month both r the military leadership and the merican people themselves. Which enomenon is more important is im- ssible of judgment. That must be ft to the perspective of history. But, ading back over the musty files of newspapers and magazines, the historians will note two important facts:

I. ON November 3, 1942, the American people, after ten years of social and economic experimentation and coddling, registered a violent protest against a political philosophy that they had seemingly come to accept with complacency if not outright approval.

II. ON November 8, 1942, the American military machine passed from its defensive rôle into ac-

tive offense, opening up a major front in northern Africa with a resolute determination to bring the war to a speedy conclusion.

Thus, in the month of November, we find America suddenly and almost inexplicably growing politically and militarily tough and realistic. These two developments were not wholly unexpected, but the scope was entirely misjudged by the political wiseacres and the commentators whom President Roosevelt has dubbed the "typewriter strategists."

The military transformation is now fairly fully delineated, but it will not become apparent until next January that the American Congress, the last freely elected representative body on earth functioning in democratic government, has taken a new lease on life.

THREE months ago, Congress had sunk probably to the all-time low in public opinion. It had committed grievous misjudgments with the congressional pensions, popularly so-called; with X-cards; and on September 7th, when President Roosevelt laid down a blunt ultimatum that Congress "must" enact an anti-inflation bill, the people applauded. The dangers inherent in this situation were apparent to any student of government. Congress, under the emergency of war, had already delegated titanic powers to the Chief Executive. It had little more left than its appropriating power, as the President plainly inferred when he threatened to do the inflation-control job by executive order if Congress should fail to meet an October 1st deadline.

Here was Congress under a seemingly deliberate aggression by the executive arm of government, at a time when its prestige had hit an all-time low. Students of government looked back over the history of the Weimar Republic in Germany and the rise of National Socialism for clues as to what would happen if Congress should sink further. In England, parliamentary elections had not been held for more than six years. Representative government was extinguished in Russia, Italy, all of Asia, virtually all of South America.

This was the situation on November 3rd, when the genius of American government reasserted itself to remodel Congress and restore its prestige. The importance of the election cannot be overemphasized.

FOR ten years the Democratic party in Congress had ruled with undisputed sway. Whenever the Democrats in the House or the Senate could reach agreement on a legislative policy, it was impossible for the minority, the Republicans, to challenge seriously and effectively the course chosen. It was impossible to curb or halt New Deal economic panaceas, or the expenditure of billions of dollars on experiments which serious-minded men in both parties gravely questioned. There were shelter-belts, WPA projects, public power projects, housing projects, road construction projects, and the items for which public funds were earmarked and spent ran into the millions.

For nearly ten years the public approved this experimentation. The war changed that. In 1938, when it became apparent that a crisis of major proportions was settling down on the world, the first manifestations of re-

volt became apparent. In the elections that year, the Republican party gained 80 seats in the House, defeated 71 Democrats and 9 members of other parties. In 1940, with President Roosevelt heading the ticket, the Democrats were able to regain only 7 of these seats.

LONG before the November 3rd election, the polls of public opinion flew danger signals that the voters were demanding less social experimentation, and a more vigorous preparation for, and after Pearl Harbor, prosecution of the war. Congress, and the administration, were consistently shown to be trailing the advance of public opinion. Congressmen, reading their mail, became acutely aware that the public was demanding labor law revisions, an end to wastage of public funds, cessation of strikes, limitations of outrageous profits which were disclosed through investigations. They were demanding hard-boiled realism and less coddling in the war effort. They, better than Washington, realized the full meaning of the President's name for the conflict, "The War of Survival." And they had come to the conviction that America could not have survival and waste and profligacy at one and the same time.

The Democrats were aware that they would lose seats in the election. They expected to lose 20 or 25. The Republicans were certain that they would gain, and they expected up until the eve of the balloting that the best they would be able to gather would be a maximum of 30 to 35 House seats.

WHEN the next Congress, the 78th, meets in January, Congress for all practical purposes will be evenly divided.

The Democrats will have 221 seats in the House, 57 in the Senate.

The Republicans will have 210 in the House, and 38 in the Senate. The full importance of this change is best realized by looking back to 1938, when the Republicans entered the campaign with only 88 House memberships.

It might be imagined that a margin of 11 seats in the House will be sufficient for the Democrats, by tightening their party machinery, to continue their rule with undisputed sway. This is not the case. There will be one Farmer-Labor member, two Progressives, and one American-Labor member in the new Congress. Often these third-party members will find themselves in the position of holding the whip hand in close contests.

Then, the Democratic membership includes such independent and free-thinking men as Howard W. Smith of Virginia, Clifton A. Woodrum of Virginia, Hatton W. Sumners of

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Texas, Carl A. Vinson of Georgia, and many others. Independent Democrats like Harry F. Byrd of Virginia, Millard Tydings of Maryland, will exercise a weightier influence in the Senate.

These men cannot be whipped into line. They will feel free to exercise a free choice on domestic issues. Whenever a handful of Democrats, in the 78th Congress, vote against the administration on a dubious issue, the administration will be defeated.

THERE will be *no* division on the prosecution of the war. For a year, national defense bills have been passing almost unanimously in the House. Appropriations have met little or no opposition, and the schisms on legislation framing military policies have not seriously menaced the administration program, except for the one instance of extension of the draft term. That passed by only one vote.

The minority leader of the House, Representative Joseph W. Martin, Jr., of Massachusetts, before and immediately after the election pledged that his party will stand for a greater war effort, not less; that it will give unflagging support to the necessary war measures; and that it will demand that the prosecution of the war be not impeded by bureaucratic red tape, fumbling, and social experimentation. In order to devote his time entirely to legislation, Mr. Martin is resigning his chairmanship of the Republican National Committee this month. That is a healthy sign, indicative that the minority party is taking seriously its new and multiplied powers and responsibilities.

Thus, the Democrats, the majority, will start the 78th Congress under the stern necessity of weeding out nonessentials and "converting" themselves wholly to the war effort. This same compulsion is on the administration, the White House. It can whittle out the nonessentials and achieve unity and harmony in Congress, or it can insist that fighting a war and conducting social experiments go hand in hand, and meet frequent and disappointing reversals in the legislative chambers.

THE Republican program is simple, as outlined by Mr. Martin: to abandon nonessentials in government expenditures, trim out the deadwood of bureaucracy, and concentrate on the war effort; eliminate all unnecessary nondefense expenditures. These objectives conform to the Republican declaration issued in September, before the elections, and their achievement would constitute a major revision of many aspects of the New Deal bureaus.

Savings of nearly $1,300,000,000 were forced on the 1943 nondefense budget now being spent. Mr. Martin and the Republicans, joined by a considerable number of Democrats, believe that these savings can be enlarged and expanded in the treatment of the 1944 nondefense budget which will be prepared by the 78th Congress. In the new Congress, the Republican minority will find frequent opportunity to enforce its philosophy in the preparation and passage of appropriations.

Immediately after the election, when the certain gain of 43 Republican seats in the House was apparent, President Roosevelt announced in his press conference that he saw no necessity

The Republican Program

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for revising his treatment of or methods of dealing with Congress, that he assumed all members were intent upon winning the war. The necessity for revised methods of dealing with the Congress will become apparent after next January 3rd. These are several of the major necessities:

I. THE Executive will find it necessary to call in the theoretical "minority" leaders, take them into the administration's confidence, and consult them on legislative policy before matters are submitted to Congress. Hitherto, with a top-heavy majority, the Democrats have not had to adopt this unpalatable procedure. In the future, failure to consult and advise with the minority will seriously complicate the passage of administration programs, and such a course would contain within it the seeds of possible serious disunity.

II. THE administration will have to shelve for the duration all social-economic experimentation, and concentrate on the war.

III. IT will be impossible, hereafter, to play bloc against bloc within the Democratic majority, farmer against labor, and vice versa. To continue this political maneuvering would amount to handing over complete control of the House to Mr. Martin and his Republicans.

IV. IT will be necessary for the administration to reach a unified conclusion within itself before asking Congress to step in, assume the responsibility, and pass legislation settling an executive squabble. There is no better example of this point than the current intra-administration fight between Manpower Commissioner McNutt and Selective Service over

compulsory legislation. It will be necessary for the administration to exercise more discipline and better judgment within its own bureaucracy.

V. Congress will have to be more frequently and better advised on the course of the war. Members now complain that it is impossible to obtain even rudimentary information on the conduct of the war. They are held responsible by their constituents for the successful or unsuccessful trend of the conflict, but in Washington they have been reduced to mere appropriating automatons, unable to learn whether the battle goes for or against America. Recently Everett M. Dirksen, Republican, proposed the creation of a joint House and Senate committee, to maintain liaison with the executive departments and keep Congress advised of the efficiency or inefficiency of the war effort. This proposal is receiving serious consideration by Mr. Martin and a considerable number of Democrats in both chambers.

It will not be surprising to find the 78th Congress creating such a committee, armed with the full power of the legislative body, to maintain a check upon the way the war is being fought.

VI. In the matter of financing the war, it will be incumbent upon the administration to eschew unorthodox and strange tax policies, and to make every possible saving before more taxes are added to an annual charge of $26,000,000,000 the taxpayers now bear. One Republican Senator, Arthur H. Vandenberg of Michigan, has suggested that the tax load has reached the point of becoming unbearable, that the next year be allowed to pass without the imposition of more burdens until it can be determined if corporations and individuals can bear a heavier load. Against this, the Treasury is calling for an increase of $6,000,000,000. This would make a total of approximately $17,000,000,000 the Congress would have added to the annual tax charge in three sessions, if the Treasury demands are met.

Radical tax theories will have to be thoroughly revised, along with radical spending theories.

Both parties, and the administration, are under the heavy necessity of acknowledging their responsibilities and rising to the level of statesmanship. The creation of this necessity was one of the most salutary results of the election, and it cannot be dodged by either party in Congress, nor by the administration.

This necessity runs through the entire legislative program ahead of the 78th Congress—appropriations, manpower legislation, taxes, agricultural programs (the need for raising more food with less machinery and less labor), further inflation controls, and all programs not directly connected with military operations.

One of the keystones of the administration's social-economic programs has been its public power policy. Currently, the Department of Interior is negotiating for the acquisition of the Puget Sound Power & Light properties in Washington. There are indications that the government will purchase these properties and integrate them with the Bonneville-Grand Coulee system. When this is accomplished, the government will have cre-

ated for itself a great power grid system in the Pacific Northwest.

A significant development in the election points to a considerable diminution of the government's public power program. In fact, a series of developments point in this direction.

In Nebraska, the veteran "father" of the public power bloc in Congress, Senator George W. Norris, was defeated at the polls. Other public power Senators were defeated, Josh Lee in Oklahoma, H. H. Schwartz in Wyoming, and, in Montana, James E. Murray barely squeezed through. A "come-back" friend of the public power program, Governor M. M. Neely of West Virginia, essaying a return to the Senate, was defeated. In Michigan, a strong administration supporter, Prentiss M. Brown, was defeated.

Public power enthusiasts also met reverses in the House races.

Clyde T. Ellis of Arkansas was defeated in that state's senatorial primary. Walter M. Pierce of Oregon was beaten. Herman P. Kopplemann of Connecticut was rejected at the polls. In Washington state, Martin F. Smith, co-author of the Bone-Smith bill to facilitate the public acquisition of private power properties, and Knute Hill were defeated. This state also rejected another public power enthusiast, former Senator C. C. Dill, running for the House. California voters rejected their public power supporter, Governor Cuthbert L. Olson.

There were a dozen other Democrats in the House races, upon whom the administration could count for votes in a public-*versus*-private power controversy, who were eliminated. The power bloc in Congress was riddled of its leadership in the elections, although John E. Rankin of Mississippi was returned to Congress.

The Republican minority of the Congress, however, is now in position and has sufficient strength to prevent any but the most economically justifiable prosecutions of this program. Excesses will likewise be trimmed out of this part of the New Deal plans.

Both Republicans and Democrats read into these enumerated factors of the election salutary results for responsible, careful government in the United States. Never before has the Roosevelt administration faced the necessity of tuning its administrative procedure to the will of the people. Its majority in Congress has hitherto permitted it to disregard protests and dissatisfactions. It has not even been required to achieve unity within its own house, so long as the legislative scales were tilted so heavily in its favor.

¶ *". . . the Department of Interior is negotiating for the acquisition of the Puget Sound Power & Light properties in Washington. There are indications that the government will purchase these properties and integrate them with the Bonneville-Grand Coulee system. When this is accomplished, the government will have created for itself a great power grid system in the Pacific Northwest."*

Nor was it required to show Congress, the representatives of the people, the respect and consideration to which that coördinate branch of government was entitled.

With this situation prevalent, the public became convinced that the war effort was drifting into a morass of inefficiency, and that the only hope of improving the fortunes of the conflict was to strengthen minority representation. The possible results, in public power policies, in taxing policies, spending policies, employment policies, and virtually every other activity of the government, cannot be minimized.

THE 78th Congress, built upon the foundation of the 77th Congress which at one time set a low record in national prestige, may and probably will usher in a New Deal in governmental sobriety and responsibility.

It is incumbent on the Democrats and Republicans to work together, to avoid devitalizing the war effort by political jockeying and disunity. Disunity in Congress will sprout disunity in the nation and complicate enormously the war crisis. It is incumbent on the administration to work with Congress, Democrat and Republican alike, and shelve for the duration those policies which have put Democrats on the spot and divided the vigor of government between social theories and prosecution of the war.

The Republicans have pledged their gilt-edged coöperation if this is done. The next move belongs to the Roosevelt administration and the Democratic party. The fate of the nation undoubtedly depends upon that move.

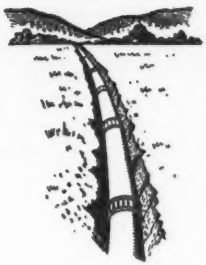
Government Control of Post-war Economy

"SOME people believe, or can be led to believe, that after the war our national economy can function half-planned and half-free. They see the government doing the over-all planning, private industry executing the plans.

"Once government controls any part of production it will be forced to control all of it. Production quotas would have to be assigned; definitions, rulings, interpretations, and clarifications issued without end; quality, quantity, and price standards set, and provision made to enforce them. . . . But don't let anyone tell you a hybrid economy, regimented in some ways and free in others, is a workable peace-time scheme.

"There is a snake with fangs so curved that once it bites it cannot let go, but perforce must swallow the unfortunate victim. Government control works something like that."

—EDITORIAL STATEMENT,
The Wall Street Journal.



A Gas Engineer's Dream Comes True

It is the 2,000,000,000-foot underground storage in a waning oil field at the edge of Los Angeles, providing for what may come in weather or war. Multiple ownership had always been the obstacle, and in war Uncle Sam stepped in. This big hole in the ground may furnish new operating standards for the industry.

By JAMES H. COLLINS

When oranges freeze on the trees in southern California, it is cold, and they admit it. Oranges froze on the night of January 8, 1937; and next day saw the heaviest gas consumption on record, 450,000,000 cubic feet.

To keep people warm in their homes, gas companies cut off many industrial customers, by an emergency clause in their contracts. The following summer, new pipe lines were laid, new storage holders built, to provide reserves for another such emergency.

Then came defense industry, and war, and the rise of the peak in another such cold spell to possibly 600,000,000 feet for one or several days.

Last summer, the possibility of oranges freezing again this winter was thoroughly gone into by gas company and railroad commission engineers. If it happened, some industries could be cut off, but many more must continue on war work. The domestic load would be heavier because thousands of new residents have come in to get war jobs.

It might not happen again, but it could, and as early as June the basic studies were started for an underground storage reserve to meet it.

For several weeks now, natural gas has been going down into the Playa del Rey oil field, and the public, learning that its capacity is 2,000,000,000 cubic feet, breathes easier — although there is a technical catch here. Full use of this reserve will hardly be possible the coming winter, because it will take time to build the reserve to full capacity. However, with the increased normal supply provided by still more pipe lines, and a prospect of needing

only around 15,000,000-25,000,000 feet extra daily if the oranges freeze, the outlook is favorable.

STORING gas underground is not new.

But taking over a producing oil field, with wells owned by several hundred different companies and individuals, scattered all over the United States, is new. Gas engineers have dreamed of doing it, but multiple ownership of such properties has always stood in the way.

While engineered as a war measure, this storage project might have been adopted in the normal development of the industry, because it promises to do the work of above-ground reserves, with perhaps lower costs. Therefore, the practice may be attractive to gas companies elsewhere. All they need is a big hole in the ground, and, with exhausted gas and oil fields convenient to many large cities, the holes are available. If the ownership obstacle can be hurdled, the rest is engineering and organization.

Steel shortage, of course, made it impossible to build the additional above-ground storage needed to provide southern California's gas reserve, so the big hole in the ground was the only solution.

And the hole in the ground made it possible to divert some of the Southern California Gas Company's reserve facilities to war. For one of its standby producer plants, held ready to make emergency gas out of crude petroleum, is being converted to make butadiene for synthetic rubber. The butadiene will be made from oil, with a by-product of fuel gas, which will be piped to the underground reservoir.

PLAYA del Rey is an oil field on the Pacific ocean, near Venice, on the edge of the Los Angeles basin, and near the gas load center.

As an oil field, it furnished a perfect horrible example of the "town lot" exploitation method, and then left complications for gas engineers seeking a big hole in the ground.

Oil was first found there in 1931. The pioneer well was thought to have tapped the sands of a neighboring field, but it soon became evident that this was a new and separate field—and the rush was on! Town lots changed hands rapidly; drilling was fast and furious; gas was wasted to the air, 50,000,000 feet daily, because there was no way of marketing it. By June, 1935, the field reached its peak, producing 14,000 barrels daily. With 304 wells in an area of 600 acres, the cow was soon milked. By 1937, production was down to 3,000 barrels. Today, only 17 wells are still pumping 750 barrels a day. With total production under 50,000,000 barrels for the life of the field, at around $1 per barrel, and the cost of 304 wells and 85 dry holes to an average depth of 5,300 feet, the cost of drilling just about cancels out the market value of the oil. Today, the chances are that such a field would have been brought into production with only the number of wells needed to recover its oil, and profit to everybody except the speculators and drilling companies.

"Not worth the powder to blow it up" is the valuation put on Playa del Rey by an oil man, thinking of oil.

But if anybody wants to buy a hole in the ground—that's different!

IN July last, the California Railroad Commission set two technical men

to work on Playa del Rey's possibilities—Dr. John F. Dodge, consulting geologist, and Roy A. Wehe, gas and electrical engineer. Their task was to examine the geological structure for gas storage possibilities, and to estimate costs. Their report furnished the information for going ahead with the project.

The underground storage reservoir could be regarded as a huge sponge of exhausted oil sands, the size and capacity of which was to be determined from data secured in drilling logs, many of which were available.

The porosity of the sponge was determined from tests of drilling cores that had been preserved by the Union Oil Company of California, which had been active in the field, and still operated a number of wells. When mapped, the sands were found to average 85 feet in thickness, over 310 acres, giving 27,000 acre-feet of storage space, 2,000,000,000 cubic feet storage capacity.

Storage could be done by pumping gas below ground, under pressure, through some of the wells that were now dry. The field was found gas-tight, so that none of the gas would be lost through underground leakage. Some years ago, a large quantity of gas was stored in another Los Angeles basin oil structure, and when a balance was struck between what was put in and what taken out, it was discovered that two-thirds of the gas had been lost—as an oil engineer put it, "It had gone some place else."

Use of the field for gas storage would affect oil production from wells still pumping, so there was a job to be taken over by oil men. It was estimated that the field, from 1943 to 1953, would produce 1,000,000 barrels of oil. With diverse ownership of wells still pumping, and many different ideas of what the future might hold for a given well, there was a world of room here for bargaining and litigation. However, the whole oil problem was handed over to the Union Oil Company, and in actual adjustment is working out smoothly.

THE Southern California Gas Company was found the logical agency to handle installation of gas storage equipment and operation of the storage field.

Equipment needed was chiefly a battery of eight 200-horsepower compressors, available in a local company plant, and not in use. Moved to Playa del Rey, they give 150-500 pounds per square inch pressure, adequate for the start. At maximum capacity, the sands

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will need over 1,000 pounds' pressure.

About 3½ miles of 26-inch pipe line was also needed, and plant for removing a sulphur component that, it was anticipated, would be added to the gas underground. For natural gas from the field had had up to 7 grains of hydrogen sulphide, enough to be objectionable, and damaging to equipment, and it is assumed that sulphur-free gas stored in these sands will absorb about the same amount.

After all factors had been calculated, including the disturbance to oil production, a rate of 3½ cents per thousand cubic feet was set, to be paid by the gas company as gas is withdrawn. The accounting was complex, but this covers everything, and brought the project up to what might be called "zero hour."

Here was a hole in the ground with everything it takes, and costs worked out to a decimal, and a gas company with the necessary equipment — but how was ownership to be acquired?

One-half the area was owned by the Union Oil Company, which was war-conscious and thoroughly coöperative —might have seen long-term advantages in converting the field into a gas storage even in normal times. But the other half was owned in small lots by more than 200 interests, scattered over our fair land.

THIS idea of converting a depleted oil field into a gas storage has intrigued California oil men as well as gas men for a long time. For gas is worth money to the oil industry, and its production is subject to sharp peaks and valleys.

"A nice, large, depleted oil field, right in the Los Angeles basin, would be a godsend to the gas company, and the oil companies who have gas to sell," said Professor Dodge last spring, talking to a meeting of petroleum accountants. "That is, if one could be found free from ownership difficulties. But thus far, nobody has stepped forward with an oil field of that kind."

Wishes can be horses, because almost immediately Dodge was called in to make the geological study for this Playa del Rey project—he heads the petroleum engineering school at the University of Southern California.

Nobody knows how long it might take to secure rights from so many owners, because nobody has tried. And the state had no authority to condemn the field for public uses.

However, there was a war, and Uncle Sam stepped in, and overnight the dream came true—the hole in the ground was available, and owners turned to negotiations for recompense.

A new word is now being used for such use of private property under war's emergencies. It is almost as handy as "directive" for "or else" situations. We now say that such a project has been "dedicated" to the national emergency. Another way of saying "or else."

So, the Playa del Rey field was dedicated, and has gone into use, and its operation from now on may develop new methods in both the gas and oil industries, helping level off some of the peaks and valleys in the natural gas picture.

TO the housewife, turning on her burners, natural gas is something that flows out of the ground somewhere, in an even stream, a gift of God.

"Natural Gas" in California

"In California, there is true 'natural gas,' flowing from wells that produce no oil, and casing-head gas, associated with oil production, which has to be separated from its content of gasoline before it is piped off to a gas company—unless it is burnt for power fuel in the oil fields. Dry gas can be drawn upon pretty much as needed, but casing-head has to be taken as it comes. Less than 10 per cent of California's gas supply comes from dry wells. The rest is casing-head."

But to gas and oil men it is a most diversified stuff, produced so abundantly at one season as to be hard to save, and so sparingly at other seasons that there are shortages. Summer is the production time, and winter the time of consumption. And instead of flowing naturally out of one kind of hole in the ground, it is produced in a number of different ways which add complications.

In California, there is true "natural gas," flowing from wells that produce no oil, and casing-head gas, associated with oil production, which has to be separated from its content of gasoline before it is piped off to a gas company —unless it is burnt for power fuel in the oil fields.

Dry gas can be drawn upon pretty much as needed, but casing-head has to be taken as it comes. Less than 10 per cent of California's gas supply comes from dry wells. The rest is casing-head.

In winter, when the gas companies have their peak market, the oil companies do not want to produce any more casing-head gas than they have to, while in summer, when the consumer load is down, they are producing at peak—the variation between seasons is nearly 300 per cent.

Casing-head gas was discovered under circumstances that high light its seasonal peculiarities—and not by an oil or gas man, but a California rancher.

ONE morning, in 1910, a ranch hand told his boss, the late Walter Wallace, that gasoline was dripping from a pipe in one of his fields. The pipe carried oil well gas to an oil company's boilers. "It's gasoline all right—I touched a match to it," he said.

Later in the day, Wallace went to see, and couldn't find any drip, because the sun was hot then, and the gasoline evaporated. Going back in cool early morning, he found gasoline dripping, and began to think about ways to recover it. The method developed was compression, and Wallace was the father of the casing-head gasoline industry, now producing 2,500,000,000 gallons of high octane gasoline yearly, 25 per cent of it in California.

THE ratio of gas to oil, coming from a well, depends on the character of the oil, and oil ranges from heavy crude to light gravity actually fit for use in an automobile as it comes out of the ground.

Normally, California had a big production of gasoline, the product for which there was the best market—happy days! But war demands heavy oils, and the upset in such production is one more complicating factor in the gas situation.

Another complicating factor in normal times is the curtailment program, under which each well is allowed a daily quota beyond which it must not pump, as the state can always produce more oil than it can market. Wells with a high gas ratio had to produce a lot of gas to profit by their oil quota, and a market had to be found for the gas.

The oil companies use gas themselves as boiler fuel, and also for repressuring, pumping it back into the ground to raise pressure that will increase the flow of oil.

Oil companies may also have their own hole-in-the-ground storages for gas, pumping it down into depleted sands, to be held for times of heavy demand.

ALL in all, the gas supply comes from many fields, over diverse pipe lines, with fluctuations in the supply and the market, not merely between summer and winter, but even over week-ends. If Saturday is fine, Los Angeles may not go to the office at all, but hop into the car and drive off until Monday, and the gas company misses the vacationers—they make a definite valley in the market curve. If Saturday is wet, Los Angeles stays home, and there is a rise in the curve.

With the best possible pipe-line plant for gathering all the different supplies of gas that the oil fields have to market, there must be time for the stuff to travel. The weather that keeps people home over the week-end, or impels everybody to turn on the gas furnace on rising, causes an abnormal demand that will probably be over by the time additional supplies of gas could be brought down from the fields—eight hours is about the minimum. Oranges freeze only at night in southern California, and seldom more than three or four nights every few years. There is some kind of cycle, but it is unpredictable. Temperatures down to 20 degrees above zero are necessary for freezing, and they last only a few hours in the dead of night. Eight hours later, the mercury is up to 60 and the sun is shining. The gas company that might have frantically ordered in more gas, has it on its hands, and needs something to put it in.

IN regions of steady severe cold, of course, that gas would be welcome. Southern California has a sort of hair-trigger climate that imposes peculiar handicaps on gas engineers, and for years they have worked for some kind

of balance. Pipe lines have been increased, above-ground storage facilities built, stand-by plants are held ready to make gas for a few hours, maybe this winter, maybe next, special clauses are provided for shut-offs in industrial plants — still, the exact balance was hard to attain in normal times, and then came war!

But war brought conditions making possible this dream of a big reservoir in the ground, as handy as the steel holders in the gas-house district, but of infinitely greater capacity, and calling for no steel, no renewal costs—not even above-ground real estate, because the land that overlies the Playa del Rey reservoir could be built over —and in the development of the city, probably will be.

This is a new deal in gas engineering, approaching the ideal, and with operating experience in the years to come, Playa del Rey may develop new standards for the gas industry.

However, gas engineers hope that oranges will not freeze this winter, because despite the reassurance that has been given the public, Playa del Rey will not have laid up a reserve large enough to meet the extremes that can come in southern California weather. In the winter of 1943-44, all will be well, with a reserve of above 1,000,000,000 cubic feet to meet whatever freaks the climate may play.

But this winter, privately, the engineers will keep their fingers crossed on weather.

OH, yes—you might like to know what is done with frozen oranges!

Oranges freeze as they hang on the trees, but the trees themselves are seldom seriously damaged. Some limbs may be lost, but citrus trees have such vitality that next season the crop is back to normal, and the principal loss is in the frozen fruit.

Oranges being juicy, it is the juice that freezes, sometimes partly, sometimes clear through. When those oranges thaw, the frozen juice cells are dry, that's all. Unfrozen cells are juicy, have all their flavor, are palatable and wholesome, and, should a freeze come this winter, will yield concentrated orange juice for Lend-lease shipment to Britain.

A frozen orange is so nearly normal that it cannot always be distinguished in picking. So after a freeze, all the fruit, frozen and untouched, goes to packing houses, where the oranges with dry cells are graded out by two methods, one radiographic, showing up the dry cells visually, and the other by electrical resistance. Partly frozen fruit is then sent to by-products plants, where its juice is extracted. The peel yields orange oil, the white pith yields pectin, and the pulp, including the dry portions, is dried for cattle food. These by-products can never bring to the grower as much revenue as ripe oranges, but they do furnish something needed by people.

And in war, how badly needed!

¶ "DISCRETION *is the better part of valor only when you hope to have the chance to fight again.*"

ARCHIBALD MACLEISH,
Librarian of Congress.

Original Cost Studies

A serious mistake from the start has, in the opinion of the author, been made by many utility companies and by most independent consultants by approaching the problem from an appraisal standpoint.

By JOSEPH B. KLAINER

THE response to previous articles[1] and recent contacts with several original cost studies indicate that there is still considerable confusion of an original cost study. This is further strongly emphasized by the language of the Federal Power Commission in its recent decision in the Hope Natural Gas Company Case.[2] As a result, considerable effort and money have already been spent and are continuing to be expended for results which do not conform to original cost standards. They will not be found acceptable to the regulatory bodies. In some cases expenditures have been made without a clear idea of what the results will be.

The serious mistake which has been made from the start in the original cost studies both by many utility companies and by most independent consultants is in approaching the problem from the appraisal standpoint. By that I mean that the goal sought has been an appraisal of original cost utilizing recorded book costs for guidance but with little effort to identify detailed book costs with presently existing property.

The language of the Federal Power Commission in the Hope Natural Gas Company Case, referred to above, clearly calls attention to the seriousness of this mistaken approach when it states, bluntly:

> There is in progress an attempt to make the reproduction cost process survive in the determination of actual cost of or investment in plant. Thus in this case an inventory was taken and then units were priced at the estimated "actual costs." The method should be condemned at the threshold.

This leaves little doubt that original

[1] PUBLIC UTILITIES FORTNIGHTLY, Vol. XXV, No. 9, p. 535, April 25, 1940, "Continuing Property Records for Regulatory Accounting"; and Vol. XXVII, No. 10, p. 596, May 8, 1941, "Can the Continuing Property Records Pay Their Way?"

[2] Reported in PUBLIC UTILITIES FORTNIGHTLY, issue of July 30, 1942, 44 PUR(NS) 1.

cost studies made on an appraisal basis will not be found acceptable, at least by this commission, and very likely by any of the other regulatory bodies concerned with this question. As a result, the utility companies concerned may well be faced with the further considerable cost of making entirely new original cost studies.

THE appraisal approach to original cost determination has generally fixed the organization setup into a group of engineers to take the physical inventory, make the cost analysis and association of work orders to the desired extent, and apply the developed original cost results to the inventory items or summaries; and a group of accountants to segregate the accounting entries to individual plant accounts, usually by location and year, accumulating the corresponding totals, make transcripts of the work order cost ledger detail, and make special studies for the disposition of intangibles and undistributed overhead costs and summaries for purposes of adjusting the results of the engineers' pricing. The supervision of each group has generally been distinct and on an equal plane.

The organization of the work along these lines has, to my mind, been the primary cause of most of the difficulties which the utility companies are having with completing their original cost determination.

FOR a sensible organization for an original cost study there must be single supervision by an individual who has a clear and complete understanding of the basic characteristics of original cost. He must also have a sufficient physical background to understand the physical characteristics of the property and its general functioning. This individual does not need to be either a formal accountant or a trained engineer. In fact, it is perhaps desirable that he should not consider himself as strictly of either profession in order to avoid the likely overemphasis which may result.

This supervisor must in addition have the ability to convey this concept to others and to train them in the inventory and cost phases of the work and their integration into the completed job. Thus he will utilize the detailed knowledge of both engineers and accountants to carry through successfully the details of the work, but above all the responsibility of both must be to him. Only through a single responsibility will there be avoided the bickering and blame casting and general lack of sympathy, with its resulting disorganization, now so prevalent between the so-called accounting and engineering groups.

Companies which still continue with a separation of responsibility can effect an immediate and marked improvement in the results of the work by creating such a single responsibility.

IN choosing the person most fitted for the entire supervision of the work, the question of cost should be secondary to that of basic competence, since it is this competence or lack of it which will determine the productivity of each of the many individuals responsible to the supervisor. It is elementary that if one supervisor has the competence to increase the productivity of each of a group of a hundred men by only 10 per cent, he is saving the salary cost of ten men without taking

into account intangible personnel values. While it is difficult to reduce such elements to percentage measurement, it is only necessary to recall the present difficulties experienced in this work by some of the utility companies to realize that emphasis on economy on this point may actually result in wastefulness.

A second factor of considerable importance in causing the difficulties that have attended the original cost work to date has been the attitude of many utility companies toward the general usefulness and sense of doing the work at all and the adoption of the standard of "it's good enough" at every conceivable opportunity.

THESE attitudes have clashed with the inherent pride which we all have in our efforts and our basic desire to do work which is useful and of value. Basically, each of us wants to turn out an honest, careful, and useful day's work. If we are made to feel that what we accomplish is of little value or importance and is done only to meet a faddish requirement which it is hoped will soon be scrapped, the result very quickly is lack of interest, carelessness, indifferent production, and a considerable personnel turnover which results in a consistent loss of the more competent individuals and a continuous burden of training new men.

Certainly, by this time, utility companies should realize that the original cost concept is here to stay and that continuing property records are a basic part of the books of account. The sooner that management gives to the original cost work the weight of importance and the standards which will generate in each person concerned a genuine pride of accomplishment, the quicker it will find its way cleared to a successful completion.

IT is understandable that a company faced with the very large task involved in an original cost study should be anxious to get ahead with the job and impatient with the time it takes for preliminary planning. As a result there is the desire to assemble a considerable organization just as soon as possible, if the company has decided to undertake the work itself, or to call in an outside consultant and authorize him to proceed with the quickest dispatch without having a definite idea of the ultimate goal.

In either case, there may result confusion and waste of man power and the very purpose sought can be defeated. A little patience at this point for the purpose of collecting the available facts and data, determining the degree of detail for the physical information, and planning for integrating this phys-

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ical inventory with the recording of costs on the accounting records will pay very profitable dividends in eliminating the wastefulness and confusion of false starts.

THE first step in the prosecution of an original cost determination for the establishment of a continuing property record should, therefore, be the development of a corporate chart. This should set forth the present company's various predecessors of different degrees and indicate the points of time at which mergers and consolidations took place. This chart should be supported by a separate sketch for each predecessor company which sets forth the pertinent facts of its corporate history and of its physical property, also discusses briefly its accounting, valuation, and statistical procedures with respect to maintaining records of its plant additions and retirements, and lists the available accounting and statistical records.

This corporate chart and its supporting data will constitute a reference book for general use in connection with planning and actually carrying through the successive steps of the work. It will be the starting point for training each new man since it will give him a broad, general view of the physical property and of the information available as to its inventory and cost.

THE companies which have engaged in this work for some time have without question already uncovered most, if not all, of the basic information for such a reference book, particularly if they have filed under requirements of General Order 49 of the Pennsylvania Public Utility Commission, or the order of May 11, 1937, of the Federal Power Commission, or similar orders of other regulatory bodies. Consequently, such companies can immediately proceed to assemble the necessary data from their various sources for compiling such a reference book.

The task of compiling the original cost reference book must largely be the work of a small group of men who will subsequently become the supervisors of various phases of the work as the organization rapidly expands after the groundwork has been laid. If it is decided to employ an outside consultant on this study, his value can be greatly increased by calling him in at this point and making his first assignment the preparation of this source of reference and the decision as to the general organization of the basic supervisory staff.

During the course of assembly of this source of data, consideration should be given to the subsequent and continuing perpetuation of the physical and cost information integrated by the original cost study at the specific point of time which becomes the starting date of the continuing property record.

WHILE original cost requirements of regulatory bodies do not in all cases require such perpetuation it is a good plan to keep this original cost information up to date and controlled to the accounting records so as to avoid a recurrence of the costly job of preparing it. A continuing property record in some form must be utilized for this purpose with the results of the original cost study recorded as the opening entries. The specifications of the continuing property record will,

Importance of Original Cost Work

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therefore, control the details of the original cost study.

Too many companies have taken the position that this is a problem to be solved after the original cost determination has been completed. In fact, in many cases, the "continuing phase" has been considered as somebody else's headache and practically no thought has been given to its requirements. This has been especially true where the work has been approached entirely from the appraisal standpoint. I feel that some of the outside consultants called in to assist on this problem have been perhaps at fault in this respect. Their experience being restricted largely to the technique of reproduction cost valuation, they have failed to recognize the basic characteristics and purposes of original cost determination.

In considering the details of the record for maintaining currently the original cost of the property, one of the first decisions to be made will involve the degree of refinement for the physical inventory detail. Between an utter lack of such detail and a completeness that is burdensome to maintain, a happy middle ground must be chosen which will yield the maximum benefit in proportion to the cost of obtaining it and maintaining it currently. This degree of detail should govern the extent of the physical inventory which may be contemplated as part of the original cost study.

There is little use to take a very detailed physical inventory at a considerable cost and then consistently to destroy its value by failing to maintain the same detail as the property undergoes the continuous change to which it is subject. Yet I have had occasion to see very large amounts of money spent for what may be termed "nut and bolt" inventories, with absolutely no

intention of maintaining a continuing property record in any comparable refinement.

THE degree of detail must be decided by each company for itself and will depend largely upon the usefulness it plans to have out of its continuing property record. Generally, it should be sufficient to make retirement quantities available from inspection or by simple calculation; it should provide all of the basic physical information requested periodically by the regulatory authorities; and it should be adaptable for valuation purposes without the need of complicated calculation, broad assumptions, or considerable reinventory.

Concurrently with the decision as to the degree of detail for the inventory, there should be established a definite and clear assignment of the property to the accounts concerned. There may be considerable discussion and difference of opinion in border-line cases. It must be remembered, however, that the account classification is a matter of segregation for the purpose of reference and comparison and that differing viewpoints may be equally reasonable. Consequently, the important elements are definiteness and consistency so that everybody concerned, whether in agreement or not, will know to what accounts various items of property are to be assigned.

CONSIDERATION must also be given in connection with the preliminary planning phases to the time element required for completing a physical inventory and the effect of construction changes occurring during this period. The basic technique of original cost makes it imperative to relate the inventory to the status of the recording of cost in the accounts at the date to which the study is to be carried. This status is directly affected by the degree of lag present at the time between the actually completed construction and the completion of the accounting routine for booking property changes. If this lag is particularly out of normal it may be well to concentrate on closing it up as much as possible before starting the physical inventory.

The writer has found it generally better to start with the property as represented by the recorded book cost and relate the physical inventory back to it by deleting subsequently booked items and substituting the property removed where applicable, rather than to project the booking ahead so as to include costs accumulated under Construction Work in Progress for inventoried property and to set up an adjusted book figure which has no reality in accounting fact.

TO accomplish the relation of the inventory to the books a list must be first prepared of the property which will be found in the field for which the accounting routine has not been completed, with a corresponding itemization of the removed property. This list must be identified to individual work orders so that the subsequent operation of the continuing property record will make certain that these work orders will be properly incorporated as part of the current change. In addition a routine must be set up to take into consideration construction changes authorized and carried through during the time the inventory is in progress. This routine at the start will consider

all property changes and will progressively narrow its scope as portions of the inventory are completed.

The matter of controlling this relation of inventory and book cost cannot be stressed too much since it can easily get out of hand and result in serious omission or duplication of property.

With these preliminary planning phases disposed of, consideration can be given to building up the necessary organization for handling the actual inventory and the corresponding cost analysis, inventory association, and accounting reconcilement.

THE decisions as to the detailed inventory procedure and the extent to which a complete inventory can be avoided by reliance upon such information maintained currently for operating and management purposes must be a matter of individual company decision. The original cost reference book previously discussed will have assembled the details as to the availability and reliability of such information.

It is not advisable to accept any part of such recorded information purely as a matter of makeshift in order to avoid the cost of a new inventory. However, occasion will be found in very many cases where operating and engineering departments have meticulously maintained physical records for their own purposes. In such instances these records can very likely be utilized either in place of actual field inventories or to supplement them.

It must be remembered that field inventories are not an end in themselves but rather just one phase of a larger problem. Their information will be fitted into the material and equipment details as accumulated from the analysis of recorded construction costs. Consequently all physical information must be accumulated with this thought in mind and assembled in a manner to expedite such association. In this connection it should be continually borne in mind that the original cost association will deal with identified property. Consequently identifying detail such as name-plate information should be meticulously recorded. Every effort should also be made to obtain and record in sufficient detail historical information from plant attendants and operating departments.

ONE of the questions that is likely to arise with respect to the inventory of the property is the advisability of having the work done by an outside inventory organization rather than by the company's own personnel. There is often the feeling that an inventory by such an outside specialist organization is likely to have greater competence and credibility. I ques-

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tion this impression. If anything, regulatory bodies will be more inclined to be satisfied by efforts of the company's own personnel which has the definite advantage of knowing the property and of familiarity with source information. I am also strongly of the opinion that if it is possible to utilize members of the company's engineering and operating departments in the direction of portions of the work, the final result is very likely to be more satisfactory than if the entire inventory work is handled by an outside organization.

There is, however, a definite spot for the utilization of the knowledge of inventory technique of such an outside organization. That spot is in the planning of the routine and control of the inventory work during its progress and often in its general supervision, and it may be well worth while to call upon an outside consultant for such assistance.

It has been customary to consider that the cost analysis and association phases of the original cost study must follow the taking and summarization of the physical inventory. This idea has again arisen from the appraisal concept where it has become the orthodox procedure. It is, however, entirely possible that it would be definitely better to carry along the cost analysis and association work in parallel with the inventory and possibly in some alternate order where the property is of comparatively small magnitude. This would be especially true where adequate physical detail can be assembled in part from existing operating and statistical records and utilized for purposes of starting the cost analysis and association work and it is found necessary to require only field check rather than complete inventory.

Here again a definite decision must be based upon the facts of each particular case. Therefore, this possibility is suggested for serious consideration in the preparatory stages of planning the work.

This discussion of the technique of original cost studies would not be complete without specific mention of what may be called, for want of a better term, the elimination process of cost association.

The identification of the physical property with the sources of its construction naturally requires the specific consideration of individual work orders. For some reason it has become the customary practice to start with the earliest available work order construction detail and to build up the property historically, giving full consideration to all additions and retirements. As a result considerable time is spent with respect to property no longer in existence and a large amount of detail is built up which has no present bearing on the basic question as to the original cost of the presently existing property.

Basically the point of interest is the property in use for the service of the public at the present date. Its cost can be determined most quickly and satisfactorily by considering the applicable construction in its reverse order; namely, the most recent construction first and systematically eliminating more and more of the presently existing property from consideration. By referencing the inventory details to work orders in this manner before proceeding with the detailed cost analy-

sis, it becomes possible in a comparatively short time to fit the entire construction at a particular location into a completed picture. The whole process can be very aptly likened to putting together a jig-saw puzzle and there will result the same basic satisfaction which comes from the fitting together of such a puzzle.

THEREAFTER all work orders or portions of work orders relating to that location and found to represent extinct property can be considered in bulk as representing the amount of retirement and the adjustment becomes the difference as against the sum total of the many individual retirements made over a period of time. It is desirable to scan these individual work orders not entirely utilized and the retirements particularly, if the resulting adjustment is a major amount, as a check for possible inventory omissions or erroneous assumptions.

The whole cost association process in this manner becomes a "breaking down" and "narrowing down" procedure resulting in considering and solving progressively a small portion of a much bigger problem and finally putting the individual pieces together for the completed solution.

It may very likely occur to the reader that this discussion has offered but little from the standpoint of specific recommendation and much from the standpoint of suggesting many troublesome problems requiring consideration and solution. In that case the writer feels that he has accomplished his purpose of clarifying the issues and emphasizing that the technique of original cost studies has little relation to the fixed procedures utilized for reproduction cost and for appraisal valuations. It is a new concept for integrating physical and actual cost detail and is even yet still in the stage of evolution. It, therefore, well deserves the clearest sort of constructive thinking and the immediate release from the mental paralysis resulting from slavishly adhering to valuation practices which have proved to be clearly inadequate.

War Transportation Capacity

"THERE *is no escape that I can see from the conclusion that we must, regardless of normal practices, resort to every expedient to get the utmost possible work out of our transportation facilities, with waste cut to the minimum, and that the amount of transportation to be performed must be reduced to the extent practicable without doing more harm than good.*

"This exhortation has its application to both carriers and shippers. The railroads have done well, but the habits of peacetime competition are persistent, and in my judgment they are not yet reaping all the benefits of the 100 per cent coöperation which ought to prevail in war time."

—JOSEPH B. EASTMAN,
Director, Office of Defense Transportation.

Wire and Wireless Communication

THE Federal Communications Commission ordered the American Telephone and Telegraph Company on November 21st to show cause why its long-distance telephone rates and other charges should not be substantially reduced.

The commission said figures reported to it by the Long Lines Department of the company indicated earnings on net book investment at a rate of 24.37 per cent annually before making provision for Federal income taxes, and a rate of 14.92 per cent after providing for the new Federal normal and surtaxes. It prepared a table showing that during the first nine months of this year the company handled 109,892,000 long-distance calls, compared with 85,465,000 in all of 1941. In addition to defending its charges, AT&T was ordered to show why an immediate reduction in rates pending conclusion of the investigation should not be made. AT&T was ordered to answer the commission's order by December 1st and to appear at a hearing on December 16th. Request for deferment of hearings until April was dismissed.

The investigation, the FCC said, "will cover not only rates but all charges, classifications, practices, and regulations in connection with the communication service rendered by the Long Lines Department."

The company's figures for the first nine months of this year indicated excess earnings ranging from $47,000,000 to $62,000,000 for the full year, depending on how Federal income taxes are figured, the commission said.

"These excess earnings bear heavily at this time both on the cost of the war and on the cost of living," James Lawrence Fly, chairman of the FCC, said in a statement. "The government must make every effort to keep down the bill for the war and to help the consumer keep down his expenses," he declared. "Every action that reduces either avenue of expense contributes to the prevention of inflation."

Long-distance telephone charges were reduced by about $14,000,000 last year after the FCC had issued a similar investigation order, the agreement to cut tolls being reached then without a formal public hearing.

The order was served on every company which participates with AT&T.

AT&T directors voted the usual $2.25 quarterly dividend on November 18th in a last-minute decision which followed speculation that a reduction might be made for the first time since 1922 because of higher Federal taxes. The company has about 235,000 stockholders.

WALTER S. Gifford, president of the American Telephone and Telegraph Company, said that the FCC order to show cause why long-distance rates should not be reduced "would seem to make no sense." Mr. Gifford said the telephone company was trying as a necessary war-time measure to reduce its Long Lines business and de-

clared that lower rates would defeat that effort. His statement was as follows:

> I find it difficult to understand why the Federal Communications Commission has issued such an order contemplating a drastic rate reduction because, under the circumstances, it would seem to make no sense.
>
> The important thing is to win the war, and the commission's program will interfere with our service, which is vital to the war effort.
>
> With our lines overloaded, we are having a hard time to handle the calls we have now and we cannot get the materials to handle more. Neither is there man power to spare to handle more. At the urgent request of the Board of War Communications we are spending millions of dollars in advertising to get the public to reduce its use of long distance, and now comes the commission seeking to reduce rates, which will do just the opposite.
>
> I fail to see how, by any stretch of the imagination, a reduction in long-distance rates will help win the war.
>
> The company, therefore, feels it must resist a reduction in spite of the fact that a rate case would require the time of many people who are urgently needed to carry on telephone service in these critical times.
>
> As to Long Lines earnings, the commission's figures are misleading, because they do not include all taxes. Our earnings as a whole, including long-distance business, are substantially lower than last year, and are short of the dividend which we have paid for the last twenty-two years.

At a special press conference on November 23rd, Chairman Fly said that the new reductions in Long Lines wire charges for national regional radio networks would be considered as part of the inquiry, as well as charges for teletype leased wires for press and other special services. The FCC order, which is the fourth against the Bell system in five years, was viewed by some Washington observers as likely to result in another compromise offer of a rate reduction—just as happened in the four preceding "show-cause" announcements.

THE FCC order of November 21st did not indicate whether the revenues obtained through toll compensation on long-distance calls by the smaller independent companies acting as connecting carriers would be protected from reduction by any ensuing cut in the overall long-distance rate charge. However, there is no doubt but that that angle will be considered in the forthcoming negotiations.

In the 1941 reduction, which totaled about $14,000,000, the FCC especially provided that the revenues received by the connecting independent companies should not be diminished. However, it is known that there is some objection on the part of the AT&T to absorbing the full amount of any additional long-distance rate cut for the benefit of the connecting carriers.

* * * *

WAR Manpower Commission officials on November 24th announced the completion of their list of 3,000 occupational titles to be used by the U. S. Employment Service and to guide local draft boards in deferring essential men. These 3,000 titles, which were compared with some 27,000 titles of all types of occupation in the United States, were confined to 35 critical industries, which included communications service and communications production, as well as other utility services and utility manufacturing. The list is a revision of one contained in Selective Service Occupational Bulletin No. 27, and was scheduled for special study by representatives of six Board of War Communications committees which met with the War Manpower Commission's representatives at the FCC on November 30th. It was expected to be issued shortly thereafter. The Board of War Communications called the meeting at the request of the War Manpower Commission, which made some changes in the original list of essential communications employees recommended by the BWC at the November 30th meeting. Industry leaders studied the revised list in a semifinished form, which was believed likely to be the last revision of the list.

Among the committees invited to participate at the November 30th meeting were Committee III on cables; Committee IV on domestic broadcasting; Committee VI on international broadcasting; Committee VII on radio communications; Committee IX on telegraph; and Committee X on telephone.

RADIO broadcasting companies and stations, telephone and telegraph companies, and the Washington, D. C., trolley and bus system are "defense industries" within the meaning of Executive Order 8802, according to an opinion rendered recently by the President's Committee on Fair Employment Practice by the office of the general counsel of the War Manpower Commission.

The opinion was made public by the committee, which is the unit of the War Manpower Commission authorized under Executive Order 8802 to redress grievances growing out of discrimination against war workers because of their race, creed, color, or national origin.

"The opinion was sought," Dr. Malcolm S. MacLean, chairman of the committee explained, "because of the complaints which we have received from Negroes, Jews, and aliens that they have been refused employment in the communications and transportation industries solely because of their race, religion, or foreign background."

* * * *

A SPECIAL Federal statutory court dismissed motions last month brought by the National Broadcasting Company and the Columbia Broadcasting System to restrain the Federal Communications Commission from enforcing regulations intended to curb allegedly monopolistic practices of the big networks.

The court, composed of Judge Learned Hand, of the United States Circuit Court of Appeals, and Judges John Bright and Henry W. Goddard, of United States District Court, granted the defendants a stay until January 3rd, however, so that the case can be argued before the United States Supreme Court.

Both Niles Trammell, president of NBC, and William S. Paley, president of CBS, issued brief statements in which they said the case would be carried at once to the highest court. "We believe any enforcement of the proposed FCC rules would seriously jeopardize the vital rôle which network broadcasting is playing in the war effort, and we will vigorously defend our right to continue the nation-wide service which we are rendering," Mr. Paley said.

The chief government objective under the new FCC regulations is to break up the so-called option system, whereby stations of the big networks all over the country have to agree to carry certain programs at stated hours. Last June, after the court in New York had decided it could not hear arguments on the validity of the rules, the Supreme Court ordered the special court set up, and arguments were heard last October.

In promulgating the regulations, the FCC held that the present option system was against the public interest "because it took away the stations' free choice without any corresponding advantage to the industry as a whole."

ON the contention of the networks that the regulations would result in an invasion of their right of free speech, the court last month held that "the interests which the regulations seek to protect are the very interests which the First Amendment itself protects, the interests first of the listener; next, of any licensees who may prefer to be freer of the networks than they are; and, last, of any future competing networks. No question of free speech can arise."

The Mutual Broadcasting System has appeared in the case on the government's side. Conceding that the proposed regulations limit the power of a network to furnish large advertisers with time on all its affiliated stations, the decision noted that the present contract system gives the networks so strong a hold on an individual station as to keep down competition which would prove beneficial. The National Broadcasting Company subsequently filed notice in Federal court of its intention to appeal the 3-judge statutory court decision dismissing its suit to restrain the FCC from promulgating new network regulations. CBS was expected to file its intention of appeal.

* * * *

THE House Interstate Commerce Committee on November 25th

unanimously approved a bill permitting the consolidation of domestic telegraph carriers and international cable and radio carriers. Chairman Bulwinkle, Democrat of North Carolina, of the subcommittee which considered the measure and wrote in changes from the version which passed the Senate, said that an attempt would be made to bring the bill before the House early in December.

The full committee made only minor changes in the measure. Major provisions of the bill follow:

"Domestic telegraph carriers" is defined as "any common carrier by wire or radio, the major portion of whose traffic and revenues from record communications is derived from domestic telegraph operations; and such term includes a corporation owning or controlling any such common carrier."

"International telegraph carrier" is defined in identical language except that the major share of revenues must come from "international" instead of "domestic" operations.

Mergers would be accomplished after application to the Federal Communications Commission. Merged domestic carriers would be required to divest themselves of any interest in international carriers and vice versa.

After application to the FCC, a public hearing would be required. The FCC then would have power of approval "subject to such terms and conditions, and such modifications, as it shall find to be just and reasonable."

Any form of alien control over the merged companies would be forbidden.

Domestic telegraph traffic destined abroad or to Canada, Mexico, or Newfoundland would be distributed to international carriers and the carriers of the contiguous companies "in accordance with such just, reasonable, and equitable formula in the public interest as the interested carriers shall agree upon and the commission shall approve." If no agreement is reached, the FCC would have authority to prescribe a formula.

The FCC would be ordered to require "fair and equitable" protection for employees of the merged firms. Workers would be guaranteed against "being in a worse position with respect to compensation or character of employment" for a period after approval of the merger corresponding to the length of time they were employed by a company before approval, but not more than four years.

During this period, workers discharged because of the merger would be given preferential status for rehiring.

Moving expenses would be payable by the consolidated company in cases of transfers. Pension rights and health, disability, or death insurance benefits would be required to be maintained. Reëmployment rights would be given to persons who entered the armed forces after August 27, 1940. Existing rights obtained by collective bargaining would be preserved. All these conditions are applicable only to workers earning $3,000 a year or less. The FCC would be given authority to approve or disapprove proposed construction of new facilities, except intrastate branches or local lines less than 10 miles long.

Immediate consideration, by unanimous consent, was blocked in House on motion of Representative Vito Marcantonio of New York City, however, it was regarded as quite possible that the bill would be brought before the House for action before the end of the session through a special rule.

* * * *

MEMBERS of the United States armed forces and persons sending money to them will receive a 50 per cent reduction in domestic telegraph money order rates effective December 1st, it was announced recently by the Federal Communications Commission. The commission suggested consideration of such action by the Western Union Telegraph Company and the Postal Telegraph-Cable Company in line with the reduction by the telegraph companies on July 23rd of cabled mail order rates to the American Expeditionary Forces.

There will be a flat rate of 50 cents for orders of $10 or less, and 65 cents for orders up to $25. The reduced rates will not apply to orders for more than $25.

Financial News and Comment

By OWEN ELY

Market Street Railway Company

(Seventh of a series of brief articles on transit companies.)

MARKET Street Railway Company, incorporated in 1893 and reorganized in 1919, operates about 243 miles of street railways in San Francisco and adjacent territory, together with 115 busses and 9 trolley coaches. The company is affiliated with the Standard Gas & Electric system, which owns substantial amounts of the preferred, second preferred, and common stocks. However, it does not own any of the prior preference on which there are arrears of about $125 a share, and hence its equity in the company seems likely to be wiped out in any recapitalization.

Fares are on a 7-cent basis, though municipal lines charge only 5 cents. The company's earnings record has been quite irregular. Thus, in 1936 $2.30 was earned on the prior preference stock, but deficits were reported in the five following years, and the current position in 1941 was weak. This year, however, earnings have shown a sharp improvement, net profits for the nine months ended September 30th being $451,652 compared with only $6,402 in the same period last year. This gain was due to an increase of about 21 per cent in operating revenues. Profits for the month of September were close to $100,000 and if this continues for the balance of the year total profits might be around $750,000, which would be equivalent to about $6.50 on the $6 prior preference stock. The stock sells currently on the New York Stock Exchange at around 7¾ (range this year 11¼-4¾).

Market interest in the prior preference stock in recent months probably has been due more to the progress of negotiations for the sale of the railway company's properties than to the increased earnings.

The idea of selling the properties to the city is far from new—it was broached back during the other World War, around 1917. In October, 1940, Ladenburg, Thalmann & Co., representing certain bondholders and stockholders, proposed to Mayor Rossi that the city buy the company for about $9,500,000. It was reported in May, 1942, that purchase by the city and county of San Francisco through a 7-year lease arrangement had been tentatively agreed on. The basic price over the period of the lease would aggregate $11,534,416 (including interest, insurance, taxes, and expenses). The annual instalments would, it was expected, be met from earnings of the combined municipal and Market Street Railway properties. While some progress was made with the lease proposal, it was reported in September that voters would pass on a plan for outright purchase at $7,950,000. However, the voters rejected this proposal in November and Mayor Rossi announced that the lease proposal would now be revived.

There are outstanding $4,321,000 first mortgage 5/45 and if a plan could be successfully carried through for sale or lease of the properties, the holders of the 116,185 shares of prior preference stock would obviously benefit thereby. But the plan to dispose of the company seems to be one of the "hardy perennials"—similar to the efforts of the Federal government to sell Pacific Gas and Electric's local properties (in connection with Hetch Hetchy) to the city, which has

also been turned down by San Francisco voters many times.

Utility Rates versus Cost Of Living

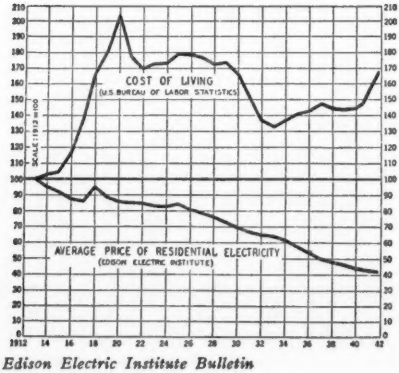
THE furore recently raised by Federal agencies over the need for new safeguards against possible increases in utility rates, as part of the fight against inflation, was commented on by F. A. Newton of Commonwealth & Southern in the November-December bulletin of the Edison Electric Institute. We reproduce herewith the well-known chart comparing the long-term trends of the cost of living and the average price of residential electricity. While this chart has appeared many times in the past in various trade publications, the latest edition, with figures up to date, might well be circulated widely as an educational item.

For the twelve months ended September 30th, average residential revenue per kilowatt hour again showed a decline, being 3.68 cents compared with 3.76 cents in the corresponding previous period, a decline of 2.1 per cent.

Mr. Newton points out in his article that according to reliable statistics compiled in August, 1940, the cost of electricity then made up only about 1.6 per cent of the family budget. Since that time he estimates that the cost of living has increased over 15 per cent, while the price of electricity has declined, so that at present the household electric bill represents less than 1½ per cent of the cost of living.

During the three years ended August 15, 1942, the cost of living has advanced 19 per cent while the average price of electricity dropped 9 per cent. Had electricity followed the trend of the cost of living, it would now be 30 per cent higher than in 1939. While the average householder has increased his use of electricity substantially, it still costs him only about 10 cents per day for all uses.

COST OF LIVING AND ELECTRICITY IN THE HOME



Edison Electric Institute Bulletin

FCC Attacks Telephone Long-Distance Rates

THE FCC recently ordered American Telephone and Telegraph Company to show cause why its long-distance telephone rates and other charges should not be reduced. The Commission denied the Company's request that hearings be deferred until April 1st or later. (See page 851.)

In the nine months ended September 30th, American Telephone and Telegraph reported net operating income (from its own operations only) of $31,189,846 compared with $21,581,228 for the same period last year. However, this was before income from subsidiaries and total interest charges, etc. Aggregate net income was $135,330,458 compared with $143,779,962 last year.

American Telephone and Telegraph Company's own plant and equipment account (less depreciation) at the end of 1941 amounted to about $333,000,000. Current assets were over $295,000,000 but possibly only about one-quarter of this figure represented the needs of the parent company alone. On this basis total investment might be estimated at around $400,000,000 (excluding, of course, the subsidiaries and miscellaneous investments). Assuming that net operating income (after all taxes) for the calendar year may approximate $32,000,000, this would seem to indicate a return of about 8 per cent. However, present conditions are highly abnormal due to the huge vol-

ume of messages connected with war activities. Last year the percentage return (figured as above) approximated 8½ per cent, in 1940 about 5½ per cent, and in 1938 only about 3½ per cent. With such a wide fluctuation under varying industrial conditions it seems unfair to consider present earnings as the basis for a heavy rate slash.

THE FCC has in effect charged the company with war profiteering. Chairman Fly states that "these excess earnings bear heavily at this time both on the cost of the war and on the cost of living."

American Telephone and Telegraph's long maintained $9 dividend rate, on which hundreds of thousands of investors are dependent for income, was threatened this year by the sharp decline in income from subsidiaries which (as indicated above) more than offset the increased earnings from the parent company's Long Lines. If the Federal tax burden had not been lightened somewhat in the final version of the tax measure directors might well have decided to cut the dividend rate.

In the past, with some small exceptions, American Telephone and Telegraph has coöperated with the FCC in reducing its long-distance rates from time to time. Last year these charges were reduced by about $14,000,000, an agreement being reached with the FCC without formal public hearings.

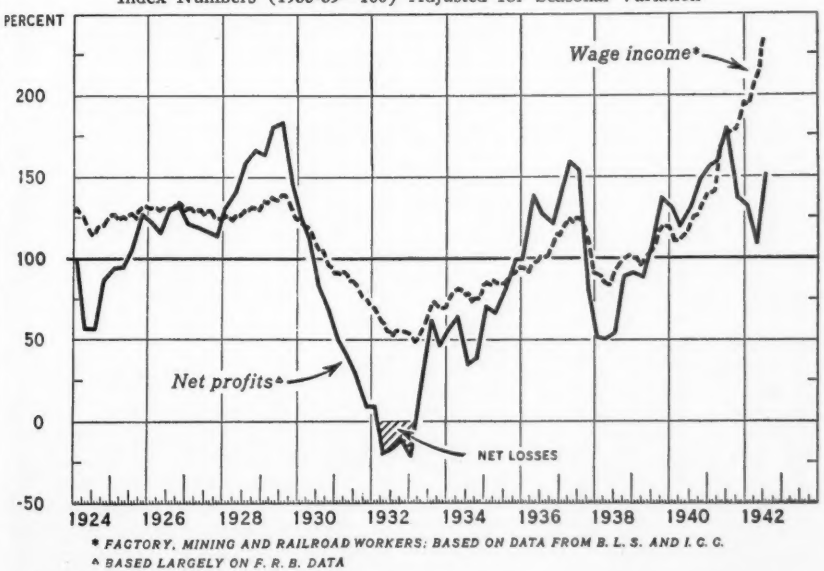
Declining Profits versus Rising Wages

THE accompanying chart, prepared by the Federal Bureau of Agricultural Economics, is rather an unusual item for a government publication in that it calls attention to declining corporate profits as contrasted with rising wage income. The bureau states in its November bulletin:

> The wage income of industrial workers is of record size and still increasing. In con-

NET PROFITS OF INDUSTRIAL CORPORATIONS AND WAGE INCOME OF INDUSTRIAL WORKERS, UNITED STATES, 1924-42

Index Numbers (1935-39=100) Adjusted for Seasonal Variation



* FACTORY, MINING AND RAILROAD WORKERS; BASED ON DATA FROM B. L. S. AND I. C. C.

^ BASED LARGELY ON F. R. B. DATA

U. S. Department of Agriculture

trast, the net profits of large industrial corporations are not as large as during the late 1920's, and in the first nine months of 1942 were about 20 per cent smaller than during the corresponding period of 1941. The recovery in profits during the third quarter of 1942 was due in large measure to adjustments in tax reserves, which during the first half had been increased more than was necessary. Personal income taxes also are rising but do not yet bear heavily on the average industrial worker.

Corporate Financing Remains At Low Levels

WHILE there is no strict war-time rationing of corporate flotations as in England, the pressure of Federal financing has apparently put a damper on new financing, both municipal and corporate. During October (see chart, page 859) utility financing totaled only $31,000,000 — $30,205,000 Long Island Lighting first 3¾/1972 and two small issues of less than $1,000,000 each. The smallest of the three issues, $300,000 Casco Bay Light & Power first 4/1962, was offered to the public, while the two larger issues — the Long Island and $750,000 Brockton Gas Light 4s—were sold to institutions. Practically all of this financing represented refunding.

In November there was apparently no utility financing, although the figures compiled by the *Commercial & Financial Chronicle* (used in our chart) are not yet available. According to *The New York Times,* new flotations for that month were only $10,765,000, the smallest reported for any month in nine years. Only tax-exempts were sold, and no stock offerings were made.

In the eleven months ended November 30th (according to the *Times*) 222 bond issues were publicly offered for a total amount of $1,164,714,000, compared with 464 issues totaling $1,976,434,000 in the corresponding period of last year. The cumulative amount was also the smallest since 1933.

There were 23 stock flotations for the first eleven months, totaling $80,739,000, compared with 72 issues totaling $289,020,000 in the same period of last year. December utility financing will, however, be bolstered by the Central Maine Power Company offering. A syndicate headed jointly by Coffin & Burr, Inc., and First Boston Corporation on November 30th was awarded the company's $12,500,000 first 3½s due 1972 on a bid of 106.31 (an interest cost basis to the company of 3.1725 per cent). The second best bid was submitted by a Halsey, Stuart & Co. syndicate, and the third by Harriman, Ripley & Co., Inc., and associates.

COFFIN & Burr, First Boston, and 16 other houses are making a public offering at 107⅜. The issue is for refunding purposes in connection with a merger in the Central Maine Power system, which was approved by the SEC on November 4th. While Central Maine Power is a subsidiary of New England Public Service, a holding company which has substantial preferred dividend arrears, its own credit position is excellent. In the twelve months ended August 31st, fixed charges were covered about 2.86 times. About 95 per cent of the company's output represents hydro-generated power. The company has benefited during the past year by activity in the textile, paper, shoe, and other New England enterprises.

The only remaining utility financing now in registration with the SEC is the $18,000,000 West Texas Utility's first mortgage bonds of 1971 and the same company's $2,900,000 notes. A large amount of utility refunding financing which was planned or proposed earlier in the year has now been abandoned or indefinitely postponed.

Odd Lots

THE SEC is not expected to rule on the validity of bond underwriting agreements before spring; this is one of the main points of issue in the old Public Service of Indiana bond case, in which the NASD disciplined seventy members for alleged violation of their agreements.

The SEC decision on United Light &

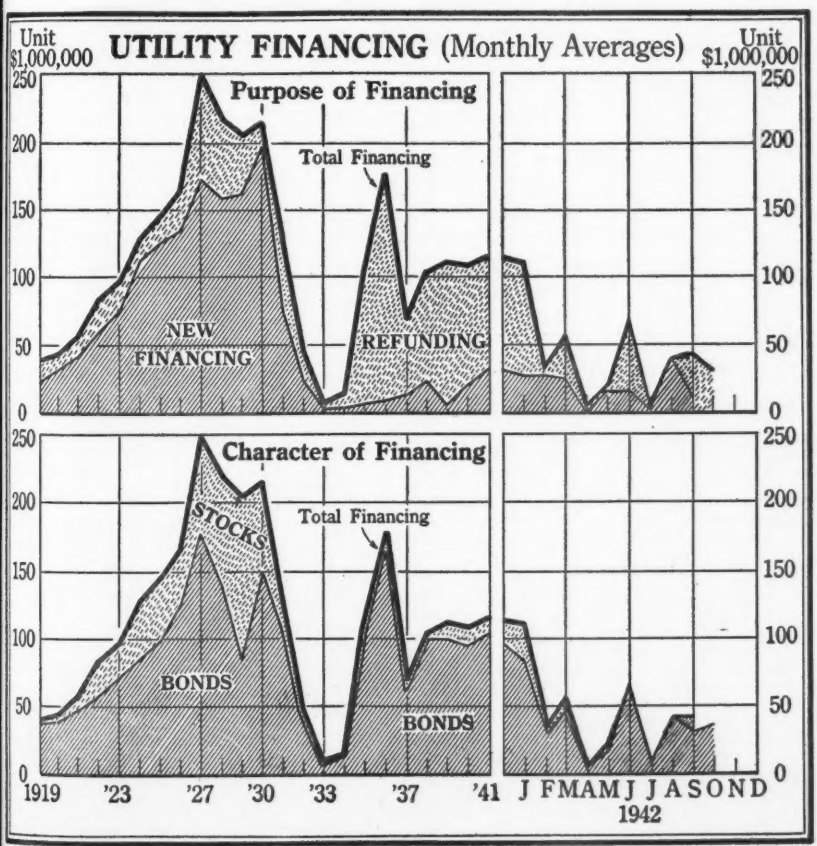
Power's request for approval of its dissolution program has been delayed for some weeks. Meanwhile, earnings on the new United Light & Railways common stock (six shares of which would be given to each share of parent company preferred stock under the plan) are estimated around $1.35 a share for the current calendar year.

Engineers Public Service is the seventh utility to appeal to the Federal courts over SEC integration orders.

Frederick E. Crane has been appointed Special Master by Federal Judge Leibell to study the proposed compromise of the "recap" litigation in the Associated Gas Case. It is understood that the trustees of AGECORP and AGECO are working on a broad plan for organization of a single top company to take over the assets of the present two companies.

MINORITY stockholders have filed suit against General Gas & Electric to recover $79,175,000 for the corporation from the group which was in control years ago, around the time that Associated Gas took over the controlling interest.

Puget Sound Power & Light has canceled its stockholders' meeting scheduled for December 15th but is still planning to go ahead with its financial and reorganization program.



Source: Commercial & Financial Chronicle

INTERIM EARNINGS REPORTS

	End of Periods	12-month Period Last	12-month Period Prev.	12-month Period Inc. %	3-month Period Last	3-month Period Prev.	3-month Period Inc. %
Electric-gas Holding Companies							
American Gas & Elec. *Consol.*	Sept.	$2.02	$2.94	D31	$ .25	$ .70	D64
Amer. Power & Lt. (pfd.) *Consol.*	Aug.	3.89	5.76	D32	.58	.84	D31
Parent Co.	June	2.98	4.72	D37	.43	1.23	D65
American Water Works *Consol.*	Sept.	.74	1.16	D36	..	..	..
Parent Co.	Sept.	.21	.49	D57	..	..	..
Cities Service P. & L. (pfd.) *Consol.*	Mar.(a)	4.40	5.76	D24	..	..	..
Parent Co.	Dec.	16.56	27.70	D40	..	..	..
Columbia Gas & Elec. (1st pfd.) *Consol.*	Sept.	7.73	11.28	D32	2.01	D10	..
Commonwealth Edison *Consol.*	Sept.	1.88	2.14	D12	..	..	..
Com. & Southern (pfd.) *Consol.*	Oct.	6.86	8.14	D16	1.58	2.01	D21
Elec. Bond & Share (pfd.) *Parent Co.*	June	5.12	7.54	D32	.95	1.85	D49
Elec. Power & Lt. (1st pfd.) *Consol.*	Sept.	10.30	8.41	23	1.12	1.26	D11
Parent Co.	Sept.	1.39	1.93	D28	.23	.51	D55
Engineers Public Service *Consol.*	Sept.	.50	1.25	D60	..	..	..
Parent Co.	Sept.	D.06	.64	..	..	..	..
Federal Light & Traction *Consol.*	Sept.	1.23	1.66	D26	.27	.38	D29
Long Island Lighting (pfd.) *Consol.*	Sept.	4.46	5.29	D15	1.49	2.04	D27
Parent Co.	Sept.	6.24	6.14	2	1.68	1.62	4
Middle West Corp. *Consol.*	June(b)	.38	.41	D7	.14	.20	D30
Parent Co.	June(b)	.20	.28	D29	.10	.19	D47
National Power & Light *Consol.*	Aug.	.56	1.27	D56	.10	.23	D56
Parent Co.	Aug.	.10	.48	D79	..	..	..
Niagara Hudson Power Co. *Consol.*	Sept.	.46	.69	D33	D.2	.5	..
North American Co. *Consol.*	Sept.	1.81	1.79	1	.40	.46	D13
Parent Co.	Sept.	1.48	1.58	D6	..	..	..
Nor. States Pwr. (Del.) (Cl. A) *Consol.*	Aug.	2.99	1.76	70	..	..	..
Ogden Corp.	June(b)	.03	.02	..	..	..	..
Public Serv. Corp. of N. J. *Consol.*	Oct.	1.49	2.04	D27	..	..	..
Stand. Gas & Elec. (pr. pfd.) *Consol.*	June	7.25	7.22	..	..	..	..
Parent Co.	Dec.	2.29	2.02	14	..	..	..
United Gas Improvement *Consol.*	Sept.	.60	.87	D31	.13	.15	D13
Parent Co.	Sept.	.50	.82	D39	..	..	..
United Lt. & Power (pfd.) *Consol.*	Dec.	6.89	8.78	D21	..	..	..
Parent Co.	Dec.	1.55	3.94	D61	..	..	..
Electric-gas Operating Companies							
Boston Edison	Sept.	2.15	2.28	D6	.54	.43	26
Conn. Lt. & Power	Oct.	2.48	3.00	D17	..	..	..
Consolidated Edison, N. Y. *Consol.*	Sept.	1.54	2.08	D26	D.01	.14	..
Parent Co.	Sept.	1.45	2.11	D31	.11	.36	D69
Cons. Gas of Baltimore *Consol.*	Sept.	4.29	4.34	D2	.78	.98	D20
Detroit Edison *Consol.*	Oct.	1.38	1.94	D29	..	..	..
Indianapolis P. & L. *Consol.*	Sept.	2.04	2.77	D27	..	..	..
Pacific Gas & Electric *Consol.*	Sept.	2.12	2.20	D4	..	..	..
Public Service of Ind.	Sept.	2.02	2.06	D2	..	..	..
Southern California Edison	Sept.	1.84	2.30	D20	.55	.73	D25
Gas Companies							
American Lt. & Traction *Consol.*	Sept.	1.85	1.89	D2	..	..	..
Brooklyn Union Gas	Sept.	1.76	2.09	D16	D.01	D.11	..
El Paso Natural Gas *Consol.*	Aug.	3.66	3.56	3	..	..	..
Lone Star Gas *Consol.*	Sept.	.91	1.29	D29	..	..	..
Oklahoma Natural Gas	Sept.	3.70	3.34	10	..	..	..
Pacific Lighting *Consol.*	Sept.	3.63	3.37	8	..	..	..
Peoples Gas Light & Coke *Consol.*	Sept.	6.06	5.82	4	1.14	.81	41
Southern Natural Gas *Consol.*	Sept.	1.70	2.23	D24	..	..	..
United Gas Corp. (1st pfd.) *Consol.*	Sept.	17.32	12.43	39	2.24	1.79	26
Parent Co.	Sept.	14.60	8.30	76	1.94	1.00	94
Telephone and Telegraph Companies							
American Tel. & Tel. *Consol.*	Aug.	10.63	11.06	D4	2.73	2.52	8
Parent Co.	Sept.	9.54	10.53	D9	2.34	2.54	D8
General Telephone *Consol.*	Sept.	2.64	2.74	D4	..	..	..
Western Union Tel.	Sept.	6.23(c)	5.09	23	..	..	..

D—Deficit or decrease. (a) Three months (twelve months' statement not issued). (b) Six months. (c) Nine months.

What Others Think

How Short Will Be the Power Shortage?

THERE is increasing evidence of fundamental conflict of opinion between the Federal Power Commission and the War Production Board on the adequacy or inadequacy of the nation's power reserves to meet the war effort. This is seen in some quarters as a basis for an attempt by the FPC to displace the WPB as the government agency primarily responsible for mobilizing the nation's power supply. If so, this would tend to upset the agreement made last April, whereby the WPB became the responsible planning agency and the FPC assumed an advisory capacity.

Be that as it may, there is little doubt but that there is important elementary difference in the basis for calculation of future power requirements as between the two agencies. FPC contends the electric energy requirements for the coming year of 1943 will total 213,000,000,000 kilowatt hours. WPB estimates 162,000,000,000 kilowatt hours. This disparity between power calculations of FPC and WPB helps explain the difference in their respective attitudes on public power.

WPB is still attempting to cut out some public power projects not immediately contributing to the war program. It still withholds approval of priorities or has halted entirely six Interior Department power developments. On leading projects of the public power program of the Interior Department, however, Secretary Ickes won an important reversal of the WPB stop order. Secretary Ickes is said to have used the FPC figures freely as the basis of his argument for resuming work on the Federal projects.

FURTHERMORE, even the President is reported to have used some of the more alarming estimates furnished him by the FPC in a memorandum which he recently sent to Army, Navy, WPB, and other war chiefs calling their attention to the possibility of an electric power shortage in the coming year. There was the suggestion implied that power estimates should be rechecked against the possibility of erroneous expectation. If such substantial error should materialize on a large scale, it might tend to reflect, to some extent at least, on the technical judgment of WPB, as exercised to date, in its national program for mobilizing power for war purposes. If such error of judgment should be succeeded by a serious shortage and consequent shutdown in war production in any area or series of areas, it might well cause a demand for a shift of the power planning responsibility from WPB to FPC.

But actual developments so far seem to indicate that the WPB advance estimates of power requirements have been closer to the fact and that the FPC estimates have had a tendency to overshoot the mark. Indeed, on the basis of past performance, even the WPB Power Division estimates have tended to be on the liberal side rather than on the short side of actual consumption.

Just as a matter of prestige in power planning ability, the FPC would, therefore, hardly seem to be in a position to bid for a displacement of WPB as the agency primarily responsible for controlling the war-time power supply of the nation. Of course, there have been steps taken by the administration more drastic and with less justification than such a suggested shift. However, the vital part played by power supply in the total war production picture is so inextricably tied up with other phases of the WPB pro-

gram that the Nelson-Eberstadt-Wilson régime now in control of WPB would be likely to make an issue of any attempt to relieve that agency of its hand on the nation's power switch. In other words, the proof of the power shortage pudding will probably be in the actual materialization of such shortages and their intensity.

If the FPC continues to be put in the position of the little boy who cried wolf, its authority as a statistical adviser might well be subject to some discount. On the other hand, as stated above, the actual development of a serious power shortage interfering with the war production program would not only vindicate the FPC but possibly result in increasing its powers during the emergency. The issue seems to be drawing out as simply as that.

FIGURES on actual output furnished by the Edison Electric Institute show a mixed tendency. The rise in the output curve of the electric industry registered for the week of November 14th continued for the week ending November 21st in a greater than seasonal ratio. All the major geographical sections of the country participated in the increase over the figures for the preceding year, with a 3 per cent rise for each region about average.

Thus for the week ending November 21st the electric output for the whole United States was 16.9 per cent more than 1941.

Yet continual though this rise in power output may be, the trend as a whole is not out of line with the WPB estimates. Indeed, the *Electrical World,* a national publication of the electric industry, stated editorially in its issue of October 31st:

> While the question of whether or not there will be a power shortage is still academic, one cannot help noticing the unmistakable trend of the weekly output curve. The peak of acceleration occurred a year ago, and since then the weekly increase over last year has very definitely been getting smaller. In some sections, like the East, the difference between this year and last is extremely slight. In fact, it would not be surprising to find within the next six months instances of regions turning out less energy than in corresponding weeks twelve months previous.
>
> This is made clearer by the news from Washington that certain war production programs were being modified. Any considerable modification without the release of raw materials for other production would have a definitely unfavorable effect upon energy generation.
>
> Therefore, the thing that we have been stating, and which brought us into sharp conflict with FPC and other harbingers of power shortages, is beginning to show itself; namely, that power shortages are predicated not so much on the inability to supply as upon the inability to consume. Our inability to ship and use munitions will limit our ability to consume power to make them, while our raw material supply is our limit to produce anything.

A SIMILAR line of thought was expressed several weeks ago by President C. W. Kellogg of the Edison Electric Institute in an address before the Indiana Electrical League at Indianapolis on October 22nd. In the course of his remarks, Mr. Kellogg pointed out how undependable it was, in estimating power requirements, to rely upon a rigid rule-of-thumb formula such as 2.75 kilowatt hours of electricity for each dollar of war expenditure. In the earlier stages of the war preparation this ratio seemed to be a workable slide rule. But as the war effort developed momentum, estimates based upon it became untenable. Mr. Kellogg stated:

> May I give some figures bearing on this point. Taking the entire preparedness period beginning in June, 1940, now well over two years ago, the greatest growth of industrial electric energy output of the nation in any month over the corresponding month the year before, occurred in September, 1941, over a year ago—the gain in that month being about 1,650,000,000 kilowatt hours. For that same month war expenditures showed a corresponding gain of $1,200,000,000—a ratio of 1.39 kilowatt hours of additional industrial energy per dollar of additional war expenditure.
>
> Since last September we have had Pearl Harbor and our own direct entrance into the war and for the month of August this year the growth in our war expenditures over the previous August was $4,000,000,000. If the ratio of additional industrial energy per dollar of additional war expenditure to which I referred before (2.75) had then been effective, the growth in industrial energy for the month of August alone would have been

11,000,000,000 kilowatt hours. Yet in fact it was just 1/10 of that figure (1.10 billion).

In general, the larger the war expenditures have progressively grown, the smaller has been their relative effect on total power requirements on an incremental basis. As a result of this experience, the War Production Board, within the last two months, has ordered the discontinuance of work on a total of 2,200,000 kilowatts of electric generating capacity, in various stages of completion by 85 electric utility companies. This result is particularly striking in that when this generating equipment recently canceled was ordered, the maximum annual war expenditure then estimated by the government has since been increased about threefold. All of this has been the logical outcome of the fact that the electric utility industry is a service business, so that as and to the extent that the war became the principal business of the country, nonwar activities were pinched off and their place taken by war industry—total energy requirements remaining about as they would be in any boom period.

It is worth noting that while the war demands have produced tremendous displacement of civilian industry, there are also reactions occurring in war preparations themselves, some of which are now decreasing in scope or will tend to do so in the near future. The huge sums expended initially for construction of new plants for war production are once-for-all expenditures which will not have to be repeated currently through the war period. Even in production itself, the first great effort necessary was to produce huge reserve supplies of needed munitions. After these supplies have been created, their maintenance is less of a job. For example, in the matter of ammunition, *The New York Times* reported last month that the supply had run so far beyond the ability of the armed forces to use it, that in certain classes an over-all reduction of about 40 per cent in production had been ordered. Some other war requirements are not relatively as far advanced, but the point I am making is that reduced requirements for one purpose can be transferred to fill the gap in others. The phase of war production we have now entered will witness more and more of these mutual readjustments of the scope of war production effort.

Of course, Mr. Kellogg conceded that this does not mean that shortages of varying degree may not develop in such localities. He did conclude, however, that "for the business of war the electric generating capacity of the nation is ample."

—F. X. W.

Brookings Report Asks Longer Work Week

THE recent declaration of a War Manpower Commission committee against racial discrimination in the hiring of employees by certain utilities found support in a report issued last month by the Brookings Institution, which urged not only the hiring of Negro workers by war industries, but even the importation of Mexican labor.

The principal recommendation of the Brookings report, however, was the urging of an increase in the actual working week from forty-two point four hours to an average of at least forty-six hours in 1943. Also recommended were curtailment of civilian goods production, expansion of shipbuilding, and efforts to bring at least 6,400,000 more workers into the labor force as part of the over-all man-power problem of raising, equipping, and supplying armed forces totaling 9,500,000 men by the end of 1943.

The Brookings study, made by Harold W. Metz, argued that President Roosevelt must evolve "a coördinated national policy designed not only to give balance within the war production program itself but balance between military manpower requirements and industrial manpower requirements."

It raised the question whether it would not be wiser to keep the Army below the planned size of 7,500,000 men in order to send greater quantities of military matériel to the other United Nations instead of immobilizing it at home with troops which cannot be transported abroad.

THESE were the main conclusions of the Brookings study of problems involved in carrying out the present military and production programs:

It would be necessary to increase the la-

"DARLING, SANTA CLAUS SAYS THAT THIS YEAR YOU WON'T BE ABLE TO GIVE ME A VACUUM CLEANER, REFRIGERATOR, WASHING MACHINE, OR TOASTER. HE SUGGESTED A FUR COAT"

bor force by 6,400,000 persons from 1942 to 1944. This would necessitate the employment of 60 per cent of the available nonfarm housewives under 45 without small children. It would also involve employing more than 15 per cent of the youths between 14 and 19 who would normally be in school, as well as more than 15 per cent of the workers who would normally retire.

At the same time we have assumed that we could secure 150,000 Mexican workers. We would be making as great, if not greater, demands upon our man power as are the European belligerents.

It assumes an actual work week of forty-eight hours for all workers, young and old, men and women, five and four-tenths hours more than was actually worked in the first half of 1942, and eight hours more than the 40-hour work week which is established by the Fair Labor Standards Act of 1938. In many instances, both the hours scheduled and the actual hours of work would have to be in excess of fifty.

It assumes that the production of goods for civilian use would be reduced by one-third. Unless money wages are reduced, taxes and savings would have to be increased by about $30,000,000,000 to absorb the excess income of the population.

A goal of 12,000,000 men in the armed forces by the end of 1944 would be even more difficult to attain. It would require in 1945 at least 10,400,000 additional persons in the labor force, under the same assumptions as we have just made concerning the length of the work week and the reduction in the production of goods for civilian use.

It would be necessary to employ all the nonfarm homemakers without young children, as well as 20 per cent of the youthful and aged workers. It would be more diffi-

cult to secure these larger additions to the labor force in 1945, and far-reaching dislocations in the social fabric would be a consequence.

While the Brookings study, financed by the Falk Foundation, raised the question whether it was wise to build the Army as large as now is planned, it did not give any recommendation on this point because it covered "questions of larger strategy which we are in no position to answer."

It made clear, however, the tremendous shipping difficulties involved if 5,000,000 or more men were to be sent abroad, since the accepted, official estimate of the number required for the defense of the Western Hemisphere has been placed at 2,000,000 men.

"If we are to have armed forces of 9,500,000 or 12,000,000 men, and if we should be able to equip them properly, there is still the question whether we shall have sufficient shipping to transport them to the fields of action," the report said.

Assuming an average transport distance of 4,500 miles for the sending and keeping troops abroad, the study said that this would require at least 33,000,000, and possibly 45,000,000, deadweight tons of shipping in continuous operation if 5,000,000 troops are to be sent abroad in 1943.

The possibility of obtaining this much additional shipping space in 1943 "appears far from bright," it was stated.

"If there is not sufficient shipping both to maintain 5,000,000 or more of our men abroad and to supply sufficient equipment to our allies, which of these two would it be best to reduce?" was the next query.

"If we should not be able to move these men abroad would it be advisable to immobilize in this country the equipment and supplies that they would require? Or would it be better under such circumstances to have a smaller Army and send the equipment thus released to our allies, who are in direct contact with the enemy, and who are in dire need of supplies?"

In discussing the necessity for increasing the work week above the present level of forty-two point four hours, the study said that in England "it has been found that a work week of fifty-five hours for women and sixty hours for men results in greater total production, though not increased output per hour, and that it is not detrimental to the health of the workers." It pointed out, however, that the output per hour apparently begins to decline around forty-five or forty-six hours, though total output continues to expand.

Considering the farm labor problem, which has disturbed Congress and the administration, the study said that agricultural production for 1943 was estimated at $13,000,000,000, based on present prices, but "in view of the steady deteriorating food situation in Europe" the requirements for ensuing years will doubtless increase.

Curbs on Utilities Protested by IBA

The Investment Bankers Association of America, in a special report issued last month by its public service securities committee, urged that "needless hampering of utility operations by governmental agencies be suspended for the duration." Declaring that the public utilities were indispensable to the war and that their treatment was of the utmost social and economic importance, the report assailed the "death sentence" for holding companies as "seriously retarding the war effort."

Public utility holding companies are, with certain exceptions, "on the way out," the report declared. It added that their protection and support, their supplying of capital needs and credit were helpful during the period of expansion, experimentation, and standardization of

the industry, but were no longer necessary, "at any rate, for those companies whose subsidiaries are now self-sufficient."

The report declared, however, that "progress in eliminating holding companies should, nevertheless, be gradual, so as not to destroy values and unsettle markets."

Compulsory disruption of holding companies by the Securities and Exchange Commission under the "death sentence" clause of the Holding Company Act, according to the committee, has "seriously hampered the necessary all-out war effort" of the industry by:

1. Taking the time of important men in litigation and contention.
2. Causing undue and unnecessary expense to both the operating properties and the holding companies.
3. Instigating sales on unprepared and unreceptive markets.
4. Disturbing the "very foundation" of the productive machinery of the industry.

As another consequence, the report continued, forced dissolution of companies and systems in thin and unstable markets had stimulated greatly new financing by "revenue districts" and the municipal buying of properties through the issuance of revenue bonds. This, it was held, would lead to "municipalization" of the business. Exemption from Federal taxation of municipal projects, the IBA declared, made the financing of municipal ownership and support of the resulting debt comparatively easy.

"We also hear," the report continued, "of the suggested formation by public power groups of nonprofit corporations which are to be free of taxation. Such a move is of highly disputable value both from an economic and social standpoint."

Multiple taxation is a "further blight" on the utilities and their stockholders, the report declared, citing instances of gross receipts taxes by county and state on top of income and excess profits taxes, leaving little or nothing for corporate surplus or stockholders.

The report concluded by recommending that all regulations not relating to current fraud prevention be postponed "in this time of great emergency" and that government bureaus "refrain from unnecessary rulings, cease disrupting the normal operations of the utilities, avoid disturbance of markets, and subordinate everything to the war effort."

"Death Sentence" Curb Urged by Writer

Relatively minor changes in the Holding Company Act would make for sound integration plans, in the opinion of Ernest R. Abrams, financial writer. It is thus up to Congress, he continues, to adopt legislation that will correct inherent frailties of the act, as well as those resulting from SEC administration of the law. Fundamentally, he holds, writing in the *Financial World,* issue of November 18th, that the SEC should first lay out for holding companies some lines for them to follow, holding in reserve the punitive power of the "death sentence." Congress should so legislate on this part of the act. Mr. Abrams stated:

> . . . all of the abuses claimed in the act to have resulted from holding company ownership of operating gas and electric systems effectively were dealt with, and rendered impossible of recurrence, by other sections than the "death sentence." Of itself, § 11 makes no contribution to holding company regulation. As interpreted by the SEC, its purpose is their destruction. That's not regulation, it's emasculation. Yet, this is one of the provisions of the act in the enforcement of which the commission has been most zealous in recent years.
>
> On the other hand, the SEC so far has largely ignored § 30 of the act, which authorizes and directs it to make studies and investigations of holding company systems, to determine the pattern to which each must conform in complying with the act.
>
> If the studies, investigations, and patterns contemplated by § 30 were made by the SEC,

each holding company would know the exact route to compliance it must travel.

More than that, each would know the route of every other holding company—what operating units each might retain, what each must dispose of. With a complete set of maps at hand, each could enter into negotiation with the other for the swapping of properties. The result would be a group of closely knit, completely integrated public utility systems.

BETTER than that, Mr. Abrams finds that "if the SEC would set patterns for each holding company in advance of threats to destroy them, not only could it be accomplished without further SEC action, but without serious loss to investors in holding company securities." In other words, there is even no particular need of repealing § 11. All Congress needs do, he thinks, is to define the "death sentence" as a "birch rod in the closet" to be taken out and vigorously applied when, two years after the war, holding companies have demonstrated a reluctance to dispose of operating units that do not fit into their patterns.

The writer recommends as a first step by Congress, an amendment to the Holding Company Act to force the SEC fully to comply with the requirements of § 30, to grant holding companies sufficient opportunity after the war to conform their subsidiary ownerships to patterns set down by SEC, and to hold enforcement of § 11 in abeyance until holding companies have demonstrated an unwillingness to adjust subsidiary holdings to SEC patterns. Regardless of whether it thus amends the act, the article held, Congress should not under any circumstances permit dismemberment of holding company systems for the duration. The writer stated:

> These are abnormal times. Vastly increased Federal taxes threaten seriously to reduce operating utility earning power in this and future years, and to divert to war use much of the revenues that normally would flow to holding companies. But publicly owned utilities not only pay no Federal taxes, even the interest they pay on their borrowings is free from Federal income tax. As a result, public bodies can capitalize these tax savings, and pay substantially higher prices for utilities forced upon the market than tax-paying private enterprises.
>
> Nor is that all. Since public bodies usually finance their utility purchases through the sale of sufficient serial-payment revenue bonds to cover the full cost of acquisitions, no charges generally are made against revenues for depreciation of utility facilities. And these tax and depreciation "savings" to publicly acquired utility systems, on the average, comprise a third of the cost of utility operation to private owners.

He concluded that enforcement by the SEC of the "death sentence" provisions of the Holding Company Act has the effect of lending Federal aid to the socialization of private industry.

More "TVA's" Advocated

A TVA program covering the whole nation is advocated in a report released November 20th by the National Planning Association. The report recommends the early establishment by Congress of agencies for development along regional lines, of the country's resources, following the model of the present Tennessee Valley Authority. Authors of the report are Alvin H. Hansen, special economic adviser to the Federal Reserve Board, and Harvey S. Perloff.

"It is difficult to understand why," the report declares, "in the face of almost universal acceptance of the need for conservation and development programs, we do not have, with the single exception of TVA, any thoroughgoing, long-range programs of coördinated regional development."

The report maintains that the question of fullest development of the nation's natural resources has been removed from the political realm by the fact of Wendell Willkie's approval of the program, which Senator McNary outlined in his speech accepting the vice presidential nomination. River systems

and their watersheds are seen by the report as the most appropriate and manageable areas for regional development, as represented in the Columbia, Colorado, and Mississippi river valleys and the TVA. The report cites similarly potential areas in the Central valley, Missouri basin, Great Lakes region, Ohio valley, upper Mississippi, the Arkansas, White, and Red rivers.

A SOMEWHAT conflicting program is to set up a Columbia Valley Authority under the control of the Interior Department at Washington. The authors' suggestion is that each such development should be controlled by a single, autonomous authority, established at the site, which would have the functions of planning, research, and operations, and, the report by inference hopes, with the same efficiency and flexibility as a commercial enterprise. However, the matter of central financing and "programming" control would be handled through the executive office of the President, with policy "directives" from Congress. Under this regional set-up, the report further suggested, would come engineering, economic and social planning, comprehensive surveys of regional resources, research and development of new processes, new industries, new markets, and "operation of multiple-purpose projects for the control and utilization of water and land resources."

While the report implies a broad government-subsidized and virtually government-operated exploitation of such regional resources, it warns at the same

time that no policy could be more uneconomic than one designed to make each region a self-sufficient economy. Each region should develop the broadest base, economically, that its resources warrant. Extensive regional dependence on the production of a limited number of basic commodities is held by the authors to be unwise both regionally and nationally.

Such a program, the report calculated, would involve investment by the public at the rate of $2,000,000,000 annually throughout a generation. The cost, as the report views the matter, would be offset by the opportunities that would be opened for more billions of private investment. The resulting stimulus to business activity, the report maintained, employment, private investment, and resulting increase in national income, would bring direct and indirect returns to the government far above development costs.

Optimism on Post-war Recovery

WITH productive capacity geared to the highest level in history, the United States will emerge from this war equipped to provide adequate minimum living standards for everyone in this country "with ease," according to a report made public on November 9th by the Twentieth Century Fund.

The survey, the work of Stuart Chase, economist, is one of a series of six special reports analyzing America's post-war problems that the Twentieth Century Fund is sponsoring. It bears the title, "Goals for America: A Budget of Our Needs and Resources."

In the two years between July, 1940, and July of this year, there were government appropriations of $12,000,000,000 and private business expenditures of $3,000,000,000, a total of $15,000,000,000, for the sole purpose of enlarging existing plants and building new productive units, Mr. Chase reported. The total is fifteen times the plant investment of the automobile industry in 1938 and three-fourths of the amount spent on manufacturing plant expansion in the entire boom decade of the twenties, he added.

The survey goes on to say that we may end the war with an energy-producing capacity half again as great as when we entered it. The nation will have two or three times as many machines to make other tools at the end of the war as it had when the conflict began, the survey added.

Citing food, clothing, housing, education, and health care as the five basic minimum requirements, Mr. Chase said that we must and can provide these needs "and considerably more" with the productive resources at hand. Full employment, full production, and minimum living standards must become "fixed central goals" of government and private enterprise, the report continued. To achieve them, there must be teamwork between the two forces, it added.

MR. Chase foresees great opportunities for private enterprise, but warns that businessmen must expect many changes in the post-war world. "Every businessman in the country should start thinking about it now," he advised. He said:

> We are, I think, heading deeper into a mixed economy, where government takes the responsibility of over-all planning for full employment, but where big business, little business, coöperative associations, and that vast zone of nonprofit enterprises—churches, clubs, foundations, universities, and the like—all share the field. In such an economy citizens should keep their attention fixed on ends to be served and use whatever means seems best to achieve them.

New Jersey Board Rejects Reproduction Cost Evidence for the Duration

ON September 16, 1942, the board of public utility commissioners of New Jersey issued a general statement of policy relating to applications for increased fares and rates under the unusual conditions created by the war. In an effort to avoid inflation by increases in the cost of essential living expenses, the board promulgated procedural directions to govern applications for increased public utility rates.

It has now added to this memorandum a provision under which the board will not, on such applications, receive while war conditions continue any estimate of the cost to reproduce the property of the utility at the time of the application.

It is stated that Federal prohibitions of and limitations and restrictions on the sale and use of critical materials which enter into the reproduction of a utility plant preclude the present construction of such a plant. The board further includes in its rule, by way of comment, the statement that

> To assume under such circumstances the reproduction of the plant and estimate the cost of its reproduction would, in the opinion of the commission, constitute a futile procedure and be of no material weight in determining whether a proposed increase should be granted or denied. Estimates of cost of reproduction of the property of a utility at any time involve, at best, elements highly speculative, leading to wide difference in opinion as to such cost. Such estimates made when conditions preclude reproduction can be nothing short of fantastically hypothetical and speculative.

PRESIDENT Joseph E. Conlon, in announcing the new amendment to the memorandum for the guidance of the commission's staff, commented:

> It is anticipated that the solution of the problems involved in applications for increased fares and rates may be particularly difficult at this time because of the unusual conditions created by the war and more particularly because of the national effort to avoid inflation by increases in the costs of essential living expenses.

It is of some significance perhaps that the New Jersey board did not reject reproduction cost evidence completely as a matter of principle—differing in this respect from other Federal regulatory commissions, notably the Federal Power Commission and the Civil Aeronautics Board. The New Jersey board's statement of policy obviously leaves the door open for a return of reproduction cost evidence as a measure of fair value when economic conditions become stabilized after the emergency.

SEC Issues Depreciation Study

PREPARED under the direction of John W. Houser, director of the public utilities division, the Securities and Exchange Commission has recently released a 250-page mimeographed monograph, entitled "Depreciation Problems in Public Utility Regulation." This is essentially a digest of opinions of the United States Supreme Court and of state courts and commissions on depreciation problems.

However, the organization of the work is such that it is a very valuable compendium of authority and precedent on the various phases of this difficult regulatory subject. It was compiled and edited by Herbert D. Miller, Daniel M. Reaugh, and Nathaniel L. Nathanson, with the assistance of Frederick Zazove and John O. Honnold. Probably the most useful feature of the work is the division of the various excerpts from opinions, according to states and their alphabetical order.

First, there is a chronological summary of opinions of the United States Supreme Court on depreciation. This is followed by the excerpts from state com-

mission decisions, starting with the Alabama Public Service Commission right through to the Wyoming Public Service Commission.

The state court decisions and lower Federal court decisions affecting state commission opinions on depreciation rulings are also classified according to the state in which they were handed down.

The state commission excerpts occupy the bulk of the volume, however, and were evidently obtained from an exhaustive survey of state commission opinions published in *Public Utilities Reports* since the beginning of that reporting system in 1915. The material taken out, however, is in the usual syllabus form. It is chiefly in the form of quoted text of the commission opinion—differing in that respect from references which might be found under the heading of depreciation in the *PUR Digest, Cumulative.*

UNDER each state division the SEC volume also specifies whether any particular statutory authority exists applicable to the regulatory treatment of depreciation, and also information as to system of accounts prescribed for various forms of utilities by the commission of that state with respect to depreciation.

The opinions are classified in three categories: first, cases dealing with annual allowance; second, cases dealing with depreciation reserve; and, third, cases dealing with accrued depreciation. Thus, for example, the California commission, which is one of the more active state regulatory bodies, has excerpts from 27 of its opinions, presented with references to a number of others embracing in all virtually every expression of opinion on the subject of depreciation which the California commission has ever made.

The scope of the SEC study is limited to digesting the opinions. It is not intended to advocate any particular point of view. No attempt has been made to cover the decisions of the Federal commissions.

—F. X. W.

Repairing Stressed at Power Exhibit

THE impact of the war on industrial production was illustrated recently at the opening of the Fifteenth National Exposition of Power and Mechanical Engineering at Madison Square Garden, New York city, when exhibitors, instead of emphasizing sales of new industrial equipment concentrated on promoting repair and maintenance of existing apparatus and materials. Many exhibitors, of course, could sell only to companies with high priority ratings.

Charles F. Roth, general manager of the exposition, remarked that few exhibitors expected to make large sales. Their exhibits and demonstrations were aimed chiefly at acquainting industry with the best methods of repair and maintenance, frequently on items that were previously tossed into the scrap pile, he said.

Of the 129 exhibitors there were very few that did not emphasize their contribution to the war effort in some form or other. In addition to marked emphasis on methods of "keeping it working," equipment and materials aimed at maintaining and increasing power production and using it more efficiently were shown.

The equipment and supplies generally being of an essential character did not show any obvious changes in the use of material. However, such items as jack lifts and power trucks for in-plant hauling appeared with wooden platforms replacing the all-steel style of previous years. Lewis-Shapard Sales Corporation and Barrett-Cravens Company were among those showing these types of hauling equipment.

Gear manufacturers were just as anxious to have broken or worn-out gears returned to their plants for rebuilding as they were to sell new gears. Welding of broken machine parts was stressed by several companies. Hot welding with the

use of Anaconda rods was promoted in one exhibit, while low-temperature welding was demonstrated by Eutectic Welding Alloys, Inc.

CONSIDERABLE attention was paid to fuel conservation through the use of cheaper grades, especially coal, to which many oil-burning plants have been wholly or partially converted because of fuel oil shortages. The Iron Fireman Manufacturing Company showed a stoker which sprays solid coal onto the fuel bed in the furnace, somewhat as liquid fuel is handled in an oil burner.

Because of the increased danger of spontaneous combustion from larger and more frequent storage piles of coals in industrial plants, the Liquid Carbonic Company introduced a method whereby its dry ice can be used to cool off "hot spots."

A group of exhibits dealt with heat conservation through better insulation of furnaces, boilers, and piping. Many innovations in this field were shown, including improvements in mineral wool, glass asbestos, and other insulating materials.

Another block of exhibits was composed of automatic control devices which regulate power plant operation from the bunkers through the multiple stages required to extract the utmost heat units from the fuel.

Straight manufacturing equipment emphasized the war theme. The newest in lathes, drills, presses, millers, grinders, shapers, and saws was shown. Considerable emphasis was put on the need for precision, because of the exacting requirements of war production, which calls for tolerances much closer than ordinary civilian industry has been accustomed to.

Exhibits of pipe and fitting included many specialties, such as tube couplings, valves, tube-bending equipment, and tubular plumbing specialties for aircraft layout.

Notes on Recent Publications

GRAND COULEE AND BONNEVILLE POWER IN THE NATIONAL WAR EFFORT. By Vernon M. Murray. *The Journal of Land & Public Utility Economics.* May, 1942.

ONE HUNDRED YEARS OF PURE WATER. By Dr. Charles F. Bolduan. Fall issue of *Quarterly Bulletin,* published by the New York City Department of Health.

The author of the article is director of the Bureau of Health Education of the Health Department. He traces the efforts of New York to provide an adequate water supply back to 1660, when the first public well was dug in front of the old fort just south of the present Bowling Green.

The article recounts the attempt to obtain a piped water supply from the Bronx river, and reports on the reservoir constructed in 1829 on the east side of the present Fourth avenue. The Croton dam and reservoir was begun in 1835 and its completion, seven years later, "was celebrated by the citizens with a grand military and civic procession and by other appropriate festivities."

The article concludes with a review of the water supply projects for New York up to date, including the Catskill water system, begun in 1907, and the Delaware river project started in 1937, the first stage of which is four-fifths completed.

SURVEY OF AMERICAN LISTED CORPORATIONS. 1939-1940 Reports for Electrical Household Appliances and Related Products, Radio and Radio Equipment, and Household Utensils.

The Securities and Exchange Commission has made public the twenty-fourth of a new series of industry reports of the "Survey of American Listed Corporations." This report covers the calendar years of 1939 and 1940, and, for one of these industries, extends earlier reports which generally covered the period of 1934-1939. Balance sheets and profit and loss statements, expressed both in dollars and percentages, as well as surplus statements and financial ratios, are presented for individual companies and for the industry groups as a whole in uniform tabular form which permits easy reference and comparison. Report No. 24 includes three industrial groups engaged primarily in the manufacture of electrical household appliances and related products; radio and radio equipment; and household utensils. All of the corporations in these three groups had securities registered under the Securities Exchange Act of 1934 at December 31, 1940.

The March of Events

TVA Projects Stopped

PRIORITY rating previously accorded the Tennessee Valley Authority for the construction and installation of 5 power generating units at 3 points were revoked on November 23rd by the War Production Board. The units had been scheduled for completion in 1944. The stoppage was in line with WPB's policy of curtailing the flow of critical materials to construction projects.

TVA projects ordered stopped were:

1. Hydro generating units No. 3, 4, and 5, each with a capacity of 32,000 kilowatts, at Kentucky dam on the Tennessee river near Paducah, Kentucky. Units No. 1 and 2 at the same dam were not affected, and are scheduled for completion in 1943.

2. Steam turbine generating unit No. 4 of 60,000-kilowatt capacity at the Watts Bar steam plant in east Tennessee. Units No. 1 and 2 are already in operation and No. 3 is scheduled for completion in 1943.

3. Hydro generating unit No. 3 of 66,700-kilowatt capacity at the Fontana dam on the Little Tennessee river in North Carolina. Units No. 1 and 2 are not affected.

Senator Kenneth McKellar, Democrat of Tennessee, asserted on November 30th that Douglas dam at Dandridge, Tennessee, had large caverns under it and was "almost impossible of successful construction," to which the Tennessee Valley Authority quickly replied that the huge dam would be completed on the scheduled date, March 1st. Mr. McKellar told the Senate that TVA Director David E. Lilienthal had caused the WPB to halt work on certain other dams to concentrate on Douglas in an attempt to fill the caves with concrete.

Mr. McKellar said the Senate Appropriations Committee would appoint a subcommittee in January to investigate construction of the dam at Dandridge.

Natural Gas Restriction

THE War Production Board on November 24th extended restrictions on all deliveries of natural gas for residential consumers to sections of Kansas, Utah, and Wyoming. Restrictions on deliveries to industrial users are already nation wide.

The restrictions provide that beginning December 2nd no utility may deliver natural gas to new residential consumers for the operations of space-heating equipment unless the equipment was installed prior to that date, or, in the case of new construction, the foundation is completed prior to December 18th, and the equipment installed by March 1, 1943.

REA Extensions Urged

EXTENSION of power lines in some rural areas to increase food production "without in any way interfering with the war effort" was asked last month by a conference of Rural Electrification Administration coöperatives, at Memphis, Tennessee, attended by delegates from Alabama, Mississippi, Tennessee, Kentucky, Louisiana, and Arkansas.

T. J. Robertson of Jonesboro, Arkansas, president of the Arkansas REA state association, asserted it was not the wish of the coöperatives to resume their normal expansion program during war time. "We believe electric service to selected farms will be a positive help to winning the war," he explained.

In a petition addressed to President Roosevelt and other Federal officials, the group pointed out that an exodus of farm labor "has endangered our future food supply. Accordingly, we desire to petition the War Production Board for permission to utilize salvaged materials and a minimum amount of other materials to construct short extensions to farms producing vital foodstuffs."

"Luxury uses of power on the farm are out for the duration," Harry Slattery, national Rural Electrification Administrator, said. He told the delegates to the conference that electricity can help solve the man-power shortage by taking the place of "sons and hired men in the Army and Navy or munitions plants." But, he said, instead of being used for luxury purposes, "it must be used to produce more food, and to preserve it for fullest nutritional use."

V. D. Nicholson, assistant REA administrator, discussing the general principle of coöperatives, asserted:

"The coöperatives retain the incentive motive of private enterprise, because they must stand on their own feet. They also have an identity of interest between the buyer and seller. They lack the tremendous amounts of red tape that go with government ownership and they fail to fall under the charge sometimes leveled against private enterprise, that it exploits the many for the benefit of the few."

FPC Sets Public Hearing

THE Federal Power Commission last month announced its order setting a public hearing for December 10th at Kansas City on an application by Consolidated Gas Utilities Corporation, with principal offices in Oklahoma City, Oklahoma, for permission to discontinue the sale of natural gas to W. S. Fees, Iola, Kansas, who in turn sells the gas to Cities Service Gas Company in Bartlesville, Oklahoma.

The application, which was filed with the FPC on October 29th, stated that the sale of gas to Fees had been made under a contract dated May 3, 1941; that the contract gave Fees the right to purchase gas produced from 4 gas wells located in Rice county, Kansas; and that "the reason applicant desires to discontinue the sale of said gas to W. S. Fees is because applicant needs said gas to supply its own markets, including industries contributing to the war effort; that applicant cannot continue to sell gas to W. S. Fees without prejudicing service to those to whom it sells gas." The application added that "the discontinuance of such sale of gas will not involve the abandonment of any facilities as applicant will merely take the gas into its own pipe lines."

The order recently announced stated that "Cities Service Gas Company advised the commission on November 14, 1942, that it protests the termination of applicant's service to W. S. Fees, for it would be unable to replace the gas which is now obtained from applicant, through W. S. Fees, except at greatly increased cost; Cities Service also stated that it desired to continue to receive this gas either from W. S. Fees or directly from applicant under the terms and conditions of the agreement between Cities Service and Fees."

A hearing was held by the commission in Kansas City on November 2nd on an application by W. S. Fees for a certificate of public convenience and necessity under § 7(c) of the Natural Gas Act as amended February 7, 1942.

OPA Rules on Tax

THE 3 per cent property transportation tax imposed under the 1942 Revenue Act, effective December 1st, must be considered as a freight rate increase which cannot be passed on, rather than as a tax which can, the Office of Price Administration ruled on November 22nd.

The ruling was said to mean that the seller will absorb the new tax under some pricing systems and the buyer under others. Where the pricing is on a "delivered price" basis, for example, the seller will absorb the tax. In cases where the price is "FOB producer's establishment," on the other hand, the buyer will absorb the cost. The rule holds throughout all variants of these two.

The 1942 Revenue Act provides a tax of 4 cents a ton on the transportation of coal. OPA action on how this tax shall be treated in arriving at maximum prices was expected in the near future, it was announced.

Arizona

Gas Utility Ordered to Supply Prices

THE El Paso Natural Gas Company was directed by the state corporation commission last month to produce by December 31st its records on contracts and sales agreements for distribution of gas in Arizona, which is not offered to the public for resale.

The commission did not explain the purpose of its order directing the company to produce its records, which said:

"You are hereby ordered to file with the Arizona Corporation Commission on or before December 31st all contracts or sales agreements between your company and any person, firm, or corporation operating within the state of Arizona for the sale of such natural gas as is not offered to the public for resale."

Arkansas

Ordered to Pay Rebate

A $625,000 refund to this year's electric customers of the Arkansas Power & Light Company was ordered by the state utilities commission last month. The company gave notice of an appeal to Pulaski Circuit Court but promised to expedite the litigation in order to make prompt payments if the commission's order is affirmed.

The refund would approximate one month's electric bills. It would affect the company's 79,155 domestic customers, 17,107 commercial consumers and industrial concerns now billed on basic or standard schedules. Industries receiving preferential rates under contract would not benefit.

Wholesale customers, such as the Citizens Electric Company of Hot Springs and nine rural electric coöperatives, would receive no

rebate because they already are enjoying "favorable rates."

The refund, vigorously protested by AP&L lawyers, was based on what the commission found to be excess earnings in 1942. It was ordered at the conclusion of a one-day hearing.

In ordering the rebate, retroactive to January 1, 1942, the commission established a principle for control of utility rates that may have a bearing on future policies. It was termed a "hindsight" principle, as differentiated from a "foresight" theory. Under this plan, the commission waited until the end of the year to determine how much profit already had been made, rather than reduce rates at the beginning of the year on the basis of estimated earnings.

Uniform Accounting Plan Approved

A UNIFORM system of accounting, prepared for use of Arkansas electric utilities by the Little Rock accounting firm of Joe Bond & Co., was approved by the state utilities commission last month.

The commission engaged Mr. Bond last December to draft uniform systems of accounting for the use of electric, gas, telephone, and water utilities. In signing the contract with Mr. Bond, the commission said it could not spare its own personnel to do the work.

The contract called for payment of $3,500 to Mr. Bond at the rate of $400 a month for the first six months of 1942 and the balance upon completion of the job. Systems for use of gas, telephone, and water companies will be prepared later.

Will Ask Equal Appropriation

THE state utilities commission will seek a legislative appropriation of about $146,000 a year for the next biennium, the same as the current budget, Chairman Joe W. Kimsey said recently.

The budget request will contain another $25,000 item for special services, he said. This item was increased from $5,000 to $25,000 by the 1941 legislature. Funds for legal and other professional services are derived from this source.

The commission's revenue, obtained from fees paid by utility companies under its jurisdiction, cannot be spent for other purposes.

FPC Approval Asked

A MOTION asking that the Memphis Natural Gas Company's proposed wholesale rate reduction to the Arkansas Power & Light Company in southeast Arkansas be approved, retroactive to November 1st, was filed with the Federal Power Commission by the state utilities commission on November 20th.

P. A. Lasley, state commission lawyer, who filed the motion, emphasized that any wholesale reduction would be passed on to the AP&L customers in five towns served with gas purchased from the Memphis Natural Gas Company.

California

PUD Price Fixed

THE California Railroad Commission recently fixed $11,632,000 as a fair price for the Sacramento Municipal Utility District to pay the Pacific Gas and Electric Company for the electric distribution system there. The company asked $18,303,000 for the property, which the city wishes to operate municipally. The district offered to pay $9,963,000, but a bond issue of approximately $12,000,000 to buy the properties was voted some years ago.

Two members of the 5-man commission, Richard Sachse and Franck Havenner, thought the price fixed upon by the majority too high. They wrote a dissenting opinion, recommending the figure $10,128,700.

The valuation was fixed as of May 21, 1938, when the commission was asked to set a fair price by the district, comprising the city of Sacramento and environs. Thus the value of additions and betterments to the system since then must be added, and an estimate of depreciation subtracted from the amount finally decided upon.

The commission's action culminated lengthy hearings and discussions extending over many years. It opened the way for direct negotiations again between the district and the company, or for eminent domain proceedings should the parties fail to agree on a final price.

Widest disparity in the estimates occurred in the item of severance, or damages for loss of the continuing revenue. The company thought it should get $5,802,891; the commission decided $1,032,000 was a fair figure, while the district and the dissenting commissioners agreed upon only $563,000 for this item.

NLRB Orders Elections

THE National Labor Relations Board on November 13th ordered elections among 3,200 workers and in 7 central California units of the Pacific Gas and Electric Company to determine whether they should be represented by the AFL or CIO.

Elections will be in the San Francisco division, involving an estimated 1,155 employees; Stockton, 590 employees; San Jose, 417; North

Bay, 384; De Sabla, 301; Colgate, 202; Coast valleys, 155.

The 7 divisions will vote as separate units. Office workers and officials would be excluded from the balloting, which must be held within thirty days. Anyone working during the last payroll period may vote, even if he is on leave.

The election would determine whether the workers are to be represented in collective bargaining by the AFL International Brotherhood of Electrical Workers or the CIO Utility Workers' Organizing Committee, or by neither.

Connecticut

Court Affirms FPC Order

THE United States Circuit Court of Appeals on November 27th affirmed an order of the Federal Power Commission requiring the Hartford Electric Light Company to comply with the commission's accounting requirements affecting public utility companies engaged in interstate commerce.

Hartford Electric, contending that it did not come under the commission's jurisdiction because it is engaged solely in intrastate commerce, had asked the court to set aside the commission's orders.

No question as to the constitutionality of the Federal Power Act, under which the commission acted, was raised, the company merely contesting the right of the commission to enforce the accounting regulation in connection with its "business of generating, transmitting, distributing, and selling electric energy in and near Hartford, Connecticut."

The circuit court held, however, that Hartford Electric Light Company sold electric energy at wholesale to the Connecticut Power Company, which, in turn, sold to customers located in the states of Connecticut and Massachusetts.

District of Columbia

Gets Race Bias Order

THE Capital Transit Company was directed on November 30th by the President's Committee on Fair Employment Practice, War Manpower Commission, to bring its employment policy into line with Executive Order 8802, requiring that there shall be no discrimination against war workers because of their race, creed, color, or national origin.

In its announcement, the committee said that the order was issued after "careful consideration" of complaints that Negroes are refused employment by the Capital Transit Company as bus and street car operators solely because of their race. The committee's announcement said:

"In the light of all the facts" and "in keeping with its duty to redress grievances which it finds to be valid, the committee called upon the Capital Transit Company to take seven steps to bring its employment practices in line with the national policy as expressed in Executive Order 8802."

The directions to the Capital Transit Company, issued by the committee, were as follows:

"1. Issue formal instructions to all of your personnel officers and employees to recruit, employ, train, or upgrade prospective workers or workers solely on the basis of qualifications of applicants or workers without regard to their race, color, creed, national origin, or citizenship.

"2. Issue formal instructions to the appropriate officer of your company to delete from its application for employment form any reference to race or religion which may be included on it.

"3. Give formal notice to any employment agency, whether public or private, through which your company recruits workers, that it will accept needed workers for any and all classifications of work solely on the basis of their qualifications without regard to their race, creed, color, national origin, or citizenship.

"4. Give formal notice to any training institution or agency through which your company recruits or trains workers for upgrading that your company will accept workers for any and all classifications of work solely on the basis of their qualifications and without regard to their race, creed, color, national origin, or citizenship.

"5. Give formal notice to Division 689, Almagamated Association of Street, Electric Railway, and Motor Coach Employees of America that it will comply fully with its obligation not to discriminate against workers because of race, creed, color, national origin, or citizenship in recruitment, upgrading, or in any other terms or conditions of employment.

"6. Furnish the President's Committee on Fair Employment Practice with a copy of each of these instructions and notices on or before December 5th.

"7. Submit a monthly report beginning De-

cember 1, 1942, indicating the number of Negroes employed, the number in employment at skill levels (skilled, semiskilled, and unskilled), the number in employment as bus and street car operators, and similar statistics covering white workers."

Kentucky

Rate Rehearing Denied

THE state public service commission on November 27th denied Tri-City Utilities Company a rehearing on the order requiring it to reduce Frankfort electric rates 22.3 per cent, effective December 1st.

Leo T. Wolford, Louisville attorney representing Tri-City, said it had not been decided whether an appeal would be taken to the state courts or to Federal court.

R. M. Watt, Lexington, president of Kentucky Utilities, said he was not prepared to say whether or not his company still would be interested in buying Tri-City, in the event the annual reduction of $78,719 eventually is upheld in favor of Frankfort consumers.

The commission's action followed a 2-hour informal conference between interested parties. Frankfort was represented by City Attorney Marion Rider, a group of consumers by Sam H. Brown, attorney, and Tri-City was represented by Malcolm Davis, rate expert from New York, Mr. Wolford, and James W. Stites, Louisville attorney.

Tri-City Utilities recently filed a petition asking for state commission approval to sell its electric distribution systems in Hancock and Breckinridge counties. The Meade County and Green River Rural Electric Coöperative corporations announced their intention to purchase the facilities in the same petition.

A hearing on the joint petition would be held in Frankfort November 30th, it was said.

Tri-City desires to sell to the Meade co-op its distribution systems in the towns of Cloverport, Hardinsburg, and Irvington, and in the communities of Addison, Garfield, Harned, Kingswood, Stephensport, and Webster for $142,000.

The Green River co-op proposes to pay $53,000 for the Tri-City systems at Lewisport and Hawesville.

If the sale is approved by the commission, it also must receive the sanction of the Securities and Exchange Commission.

Louisiana

Opposes New Gas Pipe Line

THE state public service commission last month filed notice of opposition with the Federal Power Commission to an application of the Tennessee Gas & Transmission Company, Inc., for permission to build a gas pipe line from southwest Louisiana fields to Knoxville, it was reported.

The proposed pipe line would transport natural gas through Louisiana and Mississippi to a point near Muscle Shoals, Alabama. These two main lines would diverge, one carrying gas to a point near Alcoa, and the other to a point near Nashville.

Construction of lateral lines to reach plants of the TVA in Alabama and Tennessee, and Knoxville, Chattanooga, and Nashville is contemplated. The lines also would serve communities in western North Carolina. Construction of these lines would have to wait until after the war, however.

The proposed pipe line would have an approximate annual capacity of 110,000,000,000 cubic feet.

The natural gas would be used for both industrial and domestic needs in Knoxville, according to the application.

The state commission's petition asking to be allowed to intervene as an opponent in the case sets forth that the legislature has directed opposition against construction of any further pipe lines to transport gas outside the state. The commission claims the industries sought to be supplied with natural gas fuel can obtain coal for fuel from the Appalachian fields.

Maryland

Commissioner Appointed

GOVERNOR Herbert R. O'Conor on November 24th filled a vacancy in the membership of the state public service commission by the appointment of Charles B. Bosley, of Stoneleigh, who for the last two years has been a member of the Industrial Accident Commission.

The appointment was to succeed Edmund

Budnitz, who had previously resigned from the commission to accept a place on the municipal board of commissioners for opening streets.

Michigan

Reassured on Gas

GAS rationing will not be necessary in Detroit if the Michigan Consolidated Gas Company is not deprived of any of the supply which it expects to have, according to John W. Batten, vice president and general manager.

His statement was relative to news dispatches from Washington quoting War Production Board officials as saying that rationing to the home and industry may be necessary if threatened shortages develop into a menace to the war effort.

Batten said: "We have been led to believe that none of the gas for which we have contracted will be diverted elsewhere, but we have no positive promise.

"Detroit's situation is different from that in many cities. We have a natural gas supply delivered by pipe line from Texas. Manufactured gas requires a large quantity of oil and its manufacture must be restricted because of the difficulties encountered in the transportation of oil.

"If our supply of gas is not curtailed, our only difficulty will come in extremely cold days. On those days the normal consumption of the regular gas heating units will be greatly increased and, in addition, those persons using rationed fuel are likely to turn on their gas heaters and gas ovens to supplement the heat available.

"The company already has launched an educational campaign of advertising asking our customers to coöperate in the economical use of gas that there may be no shortage in the amount available for war industries."

Minnesota

Fare Question to Be Reopened

THE state railroad and warehouse commission disclosed recently that the question of St. Paul and Minneapolis street car fares would be reopened January 12th.

A hearing will be held to decide whether the St. Paul and Minneapolis Street Railway companies may continue to charge a straight 10-cent cash fare and to sell 6 tokens for 50 cents.

The commission on November 6, 1941, granted the company the right to establish the increased rates on a trial basis for one year, with the provision that upon application of the city, the company, or the commission the schedule of fares might be revised.

Nebraska

REA District Aids War

WAR services of Nebraska's 22 REA-financed rural public power districts were described by James Beatty in a recent report to Abner K. Chestem, chairman of the state USDA war board.

The Norris Rural Public Power District of Lincoln, serving Lancaster, Gage, Jefferson, Saline, and Thayer counties joined in the report, according to Fred W. Ball of Crete, president of the board of directors.

REA systems in Nebraska now furnish electricity to 17,495 farms and other rural consumers in 49 counties, according to the report, making it possible for farmers to increase production with less farm labor. The report urged that the state and county USDA war boards and similar groups sponsoring programs devoted to the war effort make use of the services vital to the winning of the war, especially in support of various campaigns such as the scrap drive, in increasing food production, and in relieving labor shortages.

Utility Official Honored

J. E. DAVIDSON, president of the Nebraska Power Company, and civilian defense commander, recently was awarded a plaque by the national Veterans of Foreign Wars for "outstanding service to his community, state, and nation."

Davidson responded briefly after receiving the award from Colonel Leo Crosby, state guard head. He said:

"In all my activities work I have received the coöperation of all the people and various organizations throughout this area. Whatever has been accomplished must be credited to the

loyalty, interest, and fine coöperation of those who have really done the work. The honor should go to them."

In addition to the plaque, from the St. Mihiel and Rudolph Deml posts, Davidson was given a bronze medal certifying that he is an honorary member of the Veterans of Foreign Wars.

New York

Rate Cut Appeal Denied

THE state public service commission on November 21st refused the Niagara Falls Power Company a rehearing on a commission order for a $1,000,000 a year reduction of rates on special power to war industries.

The commission explained the company has been licensed by the Federal Power Commission to divert an additional 12,500 cubic feet of water per second from the Niagara river for power production. It buys other steam-produced power to make its required deliveries to various war industries.

While agreeing to supply this power without profit to itself, the commission said, the company is required by the Federal license to set up a reserve of the difference between the cost of the power and 4 mills per kilowatt hour prescribed by the FPC.

Utility May Balk Sale

THE trustees of the Staten Island Edison Company, which Mayor LaGuardia wants the city of New York to buy for a price not exceeding $14,000,000, may soon consider sale of the property to another buyer, it was disclosed recently at a public hearing before the finance committee of the city council.

The hearing, one of a number held on the mayor's local law authorizing a referendum election to empower the city to buy the electric plant, also revealed that the referendum, if authorized, cannot be held on January 30th, as originally suggested by the mayor. Hearings were closed, subject to reopening by Councilman Joseph E. Kinsley, chairman, after additional data have been submitted by Controller Joseph D. McGoldrick and by various groups and individuals opposed to the city's embarkation on a program of municipal power plant ownership and operation.

The suggestion that another purchaser might be found soon by the trustees of the utility was made by John F. X. Finn, counsel for the trustees, in an exchange of comments while Charles H. Tuttle, spokesman for a citizens' committee opposing the mayor's plan, was in the midst of an argument against the purchase of the plant.

Mr. Finn also said that the lapse of time since Mayor LaGuardia first proposed purchase of the plant had made it impossible to hold any referendum by next January 30th. In this view he was upheld by Mr. McGoldrick.

Mr. Tuttle's attack upon the mayor's plan was aimed both at the principle of municipal operation and the accuracy of the figures submitted at a previous hearing by Mr. McGoldrick to support the argument that municipal operation would be profitable.

Ohio

To Read Meters Bimonthly

THE 309,000 residential customers of the Cleveland Electric Illuminating Company will have their meters read and be billed bimonthly instead of monthly, beginning January 1st.

"This is a war measure being adopted by numerous electric service companies throughout the country to conserve time, work, and materials, including tires and gas, for everyone concerned," an announcement read. "This new manner of billing will relieve the post office of handling annually more than 1,800,000 pieces of first-class mail."

A step in the same direction was taken by the Cincinnati Gas & Electric Company, according to an Associated Press dispatch of November 25th. Rural customers of the company, the dispatch said, will have their meters read every three months. Bills will be sent monthly, with the user being billed for "average consumption" and the figures adjusted when the meter is read again.

The company also gave customers the option of mailing in readings for the off months.

Accepts Traction Duties

MAYOR Frank J. Lausche announced recently that his predecessor as Cleveland's chief executive, Edward Blythin, had accepted appointment as a member of the 3-man commission that will control all of the operations and personnel of the city's transit system.

Blythin will take office as a transit commissioner on January 1st, along with Properties Director William C. Reed and Attorney William C. Keough. Reed will serve as chairman.

Mayor Lausche's appointments of Reed for

a 6-year term, Keough for four, and Blythin for two (to inaugurate overlapping tenure of the transit commissioners) was to be presented to the city council for approval, which must be given by at least a majority of the 33-man body.

Pennsylvania

No Gas to Be Piped to Capital

STATE Public Utility Commissioner Thomas C. Buchanan last month said he had been advised by Donald Nelson, War Production Board head, that there was little chance of natural gas being piped into Harrisburg by a Pittsburgh company for war industry use.

Mr. Buchanan previously had charged that a proposal by the Manufacturers Light & Heat Company, Pittsburgh, to bring natural gas into Harrisburg for the first time was an attempt "to acquire a privilege in war time for its private advantage after the war."

The company previously had applied unsuccessfully to the PUC for permission to pipe natural gas into the Harrisburg area. Mr. Buchanan, who protested the new attempt to bring gas to Harrisburg, said he was informed by Mr. Nelson that the original proposal came from the War Department, but that the war industries likely would continue to use fuel oil.

Natural gas now is being piped into Pittsburgh through an auxiliary line, passing near Harrisburg, which brings Kentucky gas into eastern Pennsylvania for transshipment West. Mr. Buchanan cited the needs of Pittsburgh industries in objecting to the servicing of new territory with gas.

South Carolina

Denies Debt Is State Obligation

THE board of directors of the Santee-Cooper Power Authority, in a meeting at Columbia last month, in effect took issue with the Federal Bureau of the Census on the question of whether the bonded indebtedness of the authority is a state debt.

It recently came to light that the Bureau of the Census, in reporting the bonded indebtedness of the state of South Carolina, included, as a state debt, the $24,835,000 in outstanding Santee-Cooper bonds.

At its meeting the board took action to draw attention to the Santee-Cooper Act of 1934, setting up the authority, as a means of refuting the bureau's designation of the authority's debt as a state debt.

Texas

Assumes Commission Post

LAWRENCE D. Ransom, chief deputy county clerk and chairman of the Navarro County Democratic Executive Committee, on December 1st assumed his duties as secretary of the Texas Railroad Commission.

Commissioner Beauford Jester also indicated James E. Kilday would be replaced as chief of the motor transportation division. Jester said he had received many letters urging retention of Kilday as chief of the motor transportation division, but indicated a change would be made in this office shortly. Kilday was a candidate for the unexpired term of Jerry Sadler in the Democratic primary election last summer, a race which was won by Jester.

Vermont

Coöperatives Favored

A POST-WAR America in which business leaders might first resist, but later recognize, widespread introduction of the coöperative plan as "the saving grace of private enterprise" was pictured at Burlington last month by Leland Olds, chairman of the Federal Power Commission, at a state farm bureau meeting.

Denying coöperatives would function to the detriment of private enterprise, Olds insisted they would perpetuate the present system by forcing private business to revise its ways and become a "social trusteeship."

Olds declared that "the battle to root out

selfishness from the practical business of life, to destroy the worship of Mammon, is going to be a harder battle than the battle to defeat the dictators."

But, Mr. Olds added, "we are beginning to discover, in the very mobilization of the entire energy of the United Nations to win the war, the secret of the human relationships which will enable democracy to grow and flourish after the war."

Washington

Ross Dam Grant Accepted

AT a special meeting last month the Seattle city council passed an ordinance accepting a Federal grant of $1,864,760 to apply on the project for increasing the height of Ross dam on the Skagit river.

The board of public works is expected to call soon for bids on construction of the addition. The first time bids were advertised, only one firm bid on each of the several parts of the work, and the total cost was higher than the city could pay. The city council then asked for Federal assistance, as the Federal government originally had asked the city to extend the dam to provide more power.

Asked to End Special Water Rate

W. CHESTER Morse, water superintendent, recently asked the Seattle city Council to repeal an emergency ordinance passed in 1933 providing light and water for destitute and unemployed citizens at special rates.

Morse said the low rates are no longer necessary because of the war boom. Under the ordinance, many persons were entitled to the reduced rate, particularly those on unemployment relief, and the bills were paid by the board of county commissioners.

West Virginia

Commission Ordered to Give Ruling

THE state supreme court on November 24th entered an order directing the state public service commission to show why it should not rule on the legality of doubling the toll bridge fare between Bridgeport, Ohio, and Wheeling island.

The town of Bridgeport and C. A. Jones, intervenor, asked the court in a second application for a writ of mandamus against the commission and the city of Wheeling. The court set the first day of the January term to hear arguments in the case.

Specifically, the petitioners asked that the commission be compelled to decide whether it was "lawful and proper or unjust and discriminatory" to raise the toll from 5 to 10 cents between Bridgeport and the island and abolish the former 5-cent fare between the island and the city of Wheeling.

They asked also that the city of Wheeling show why it should not be prohibited from selling the two bridges to the state prior to a final determination of the matter by the state commission.

Wisconsin

Commission Sets Price

THE village of Pardeeville, Columbia county, may acquire the property of the Pardeeville Electric Light Company by payment of $24,900, with certain adjustments, by March 21, 1943, according to the terms of an order announced November 30th by the state public service commission.

Acquisition proceedings were started by the village August 15, 1933, when citizens voted to buy the electric utility property. After delays resulting from a court injunction which was not settled until late in 1935 and postponements requested by attorneys, the commission issued an order July 13, 1936, fixing the purchase price of $25,000.

One of the problems was determination of the specific property for which compensation must be made. The utility sought to renew its claim that hydroelectric property, consisting of a dam, millpond, and flowage rights, was its property and subject to acquisition, but the commission ruled against it.

The Latest Utility Rulings

CAB Repudiates Reproduction Cost

THE Civil Aeronautics Board has concluded that reproduction cost evidence is "irrelevant and immaterial to the issue of a fair and reasonable rate, and evidence of this type in the future will not be admitted to the record in rate proceedings for the purpose of showing the value of the carrier's property." This statement is contained in a decision of the board involving compensation to American Airlines, Inc., for the transportation of mail by aircraft. The board also said:

> This board in exercising its rate-making functions has never and does not now measure the reasonableness of the rate in terms of a fair return upon the so-called "fair value" of the property used and useful in the public service. One of the primary factors, which is frequently controlling, in determining the fair value of such property is its reproduction cost less depreciation. We believe that experience has proved such method to be administratively and economically unsound; its application to public regulated enterprise during the past four decades has placed upon state and Federal regulatory agencies a burdensome, complex, expensive, and futile task. Recent opinions of members of the Supreme Court of the United States add to the weight of notable dissents by members of the court in the past in further reducing the prestige of this rate-making formula.

The recent opinions cited are Driscoll *v.* Edison Co. 307 US 104, particularly the concurring opinion of Mr. Justice Frankfurter and Mr. Justice Black and the concurring opinion of Justices Black, Douglas, and Murphy in Federal Power Commission *v.* Pipeline Co. 315 US 575. The majority of the board authorized a rate of three-tenths of one mill per pound mile.

One of the members, Harllee Branch, dissented and his dissent includes this comment with respect to Federal excess profits taxes:

> The majority has pointed out that the excess profits tax may possibly operate to reduce American's earnings to a somewhat lower level. In so far as the excess profits tax will operate to reduce American's anticipated high profits from nonmail revenues, it is pertinent for the board to point out this fact. But in so far as it is used to justify an excessive mail rate, I fail to see the logic in one government agency providing an excess profit in the mail rate and assuming that another agency of the government (the Bureau of Internal Revenue) may recapture some portion of such excessive profits. Not only do I fail to see the logic of such an attitude, but one cannot fail to note that the complexity of the excess profits tax law makes uncertain any assurance that such excess profits will actually be returned to the government.

Re American Airlines, Inc. (Docket Nos. 334 and 204).

Court Upsets Puerto Rico Utility Seizure

THE First United States Circuit Court of Appeals has set aside a judgment entered July 10, 1942, by the United States District Court for Puerto Rico, condemning properties of the Puerto Rico Railway Light & Power Company and vesting them in the United States. The original petition was filed by the Attorney General, pursuant to the request of the Federal Works Administrator, under the provisions of the amended Lanham Act, 55 Stat 361.

The government first contested the jurisdiction of the court to hear the ap-

peal on grounds that the condemnation award was not a final judgment inasmuch as compensation remained to be determined. The court held against this on the authority of United States *v.* 243.22 Acres of Land, 129 F(2d) 678 (1942). The court found that the Lanham Act was primarily designed to provide means by which "public works" may be acquired, maintained, and operated in areas found by the President to be suffering from an acute shortage affecting national defense activity. The government contended that condemnation of the Puerto Rico utilities was necessary because of the threatened shortage of fuel oil and the necessity for coördinating them with Federal hydroelectric properties. The court found that the properties were already coördinated without the necessity for seizure. The government apparently conceded that the Lanham Act gave to it no authority to condemn public utilities as such, but that only "improved or unimproved interest in land" may be taken by eminent domain under such legislation.

The court's opinion, by Judge Magruder, noted that the President of the United States had not specifically authorized the seizure of utility properties by condemnation but had merely given blanket authority to the Federal Works Administrator to take action by "any of the methods prescribed by said act." The court concluded:

> The judgment below will have to be set aside in its entirety, for two reasons: First, because it does not sufficiently appear that the President approved the taking; and, second, because if we should affirm the judgment in so far as it applies to the taking of lands and interests therein owned by appellant, that would leave the United States irrevocably committed under the act of February 26, 1931, 46 Stat 1421, to the payment of compensation for something which the Federal Works Administrator might never have dreamed of taking had he correctly apprehended the limited scope of his powers under the act. Taking appellant's lands and easements would quite effectively dismember a going concern, but it is not obvious that this would contribute to the relief of a shortage in electrical transmission and distribution facilities. Appellant will have to be restored forthwith to full possession of all its properties.
>
> The judgment of the District Court is vacated and the case is remanded to that court for further proceedings not inconsistent with this opinion.

Puerto Rico Railway Light & Power Co. v. United States of America (No. 3801).

Rule on Deposit and Reconnection Charge Upheld; Penalty Reduced

A COMPLAINT against rules of a gas utility, governing deposits and penalties, was dismissed with respect to the deposit requirement and sustained as to the amount of penalties in a proceeding before the Missouri commission. The commission also permitted a $2 reconnection charge for restoration of service after discontinuance for delinquency in payment.

The present rule and a proposed rule were found not to be in conflict with the commission's general order governing deposits.

The commission said:

> It is not the intention of the commission that the defendant shall understand the commission approves of any arbitrary action on its part at this time in requiring its customers to make a deposit, customers who have been taking gas service from it for a considerable time and have a good paying record. On the other hand, the commission can understand how the defendant must be permitted to operate its business for the good of all customers and not for the good of any one or few who may take advantage of any rule the defendant may have in effect. If a customer becomes delinquent in his account the defendant must, of course, be permitted to discontinue service if payment is not made within the time prescribed.

In substance, the rule provides for a deposit or guaranty of payment in the absence of established credit; interest at 6 per cent on deposits unless the compa-

ny keeps cash deposits in a separate and distinct trust fund and deposits it as such in some bank or trust company, not to be used by the utility in the conduct of its business, in which case 3 per cent is allowed; and refund upon discontinuance or upon establishment of credit.

A rule requiring customers to pay one cent per hundred cubic feet on delinquent bills not paid within ten days appeared to be harsh, and the commission approved a penalty of 5 per cent as sufficient to encourage prompt payment. Concerning the reconnection charge, the commission said:

> If a customer becomes delinquent to the extent that the service is discontinued the defendant may add the 5 per cent penalty to the bill when paid and the additional charge of $2 as a reconnection charge because of the extra amount of work involved in driving to the customer's premises to turn on and turn off the customer's gas service. Under the conditions existing in our country at this time and because of the widely scattered territories served by the defendant it appears fair and reasonable to allow the defendant to add the 5 per cent penalty to all bills that are delinquent and the $2 reconnection charge if the service is discontinued.

Raytown Chamber of Commerce v. Central Distributing Co. (Case No. 10270).

Members of Commission Must Act As a Board

INFORMAL action by members of the Texas commission was declared invalid by the supreme court of that state in reviewing orders relating to operating authority of motor carriers. The orders were set aside without prejudice.

The court proceeded on the theory that individual commissioners, although constituting a majority of the board, cannot take action without a meeting after notice to all members.

Two of the commissioners, without notice to a third commissioner who, it appeared, opposed an application, had met somewhere (the place undisclosed by the record) in informal unscheduled meetings, and they agreed that certificates should be granted. The matter was not considered at any regular meeting or at any previously called special meeting. It was said to be the practice for one commissioner to examine the record and then take it to either one of the commissioners whenever and wherever he could be found and get his approval. No notice was given and no minutes kept.

The statute, according to the court, makes it clear that the legislative intent is that the commission shall be composed of three members and that acting as such, and not as individual members, they shall have the authority to grant or refuse applications to act as common carriers over the state. *Houston & North Texas Motor Freight Lines v. Texas Railroad Commission.*

OPA Move to Bar Fare Increase Fails

AN increase in fares by tariff filed on September 22nd, prior to the October 2nd amendment of the Price Control Act, was "made" at the time of filing rather than the effective date of the increase, according to a ruling of the Federal District Court. This decision was made by Justice Daniel W. O'Donoghue in dismissing a petition by the Office of Price Administration for a final injunction to prevent the Washington, Marlboro & Annapolis Motor Lines from putting into effect a fare increase.

Counsel for OPA argued that the increase, effective on October 26th, was in violation of the amendment to the Price Control Act which requires motor carriers to serve OPA with thirty days' notice of any proposed increase in fare to give the agency an opportunity to intervene. Justice O'Donoghue said in part:

The line did all within its power to put the rate into effect when it filed the tariff. It had nothing more to do. The fare went into effect automatically on October 26th—the limit of time in which objections could be legally filed with the ICC.

A claim of OPA counsel that the increase would materially bring about inflation was denied. Justice O'Donoghue pointed out that there were only a few hundred cases at the most that were in the same category as this one—pending at the time the amendment became law. *Office of Price Administration v. Washington, Marlboro & Annapolis Motor Lines, Inc.*

Stock Sale to Parent at Par Not a Stock Dividend

THE District of Columbia commission, in approving the issuance of 300,000 shares of common stock by the Chesapeake & Potomac Telephone Company to the American Telephone and Telegraph Company, ruled that the sale of the stock at par rather than at its present value did not involve the declaration of a stock dividend contrary to Par. 75 of the act creating the public utilities commission.

The applicant is a corporation organized under the laws of the state of New York, furnishing service in the District of Columbia. The American Telephone and Telegraph Company is the sole owner of the outstanding capital stock as well as the owner of demand notes, part of which were to be retired as a consideration for issuance of the stock. The commission said concerning the stock dividend question:

> The facts in this case are, with one exception, similar to the facts developed in Formal Case No. 313. [*Re* Potomac Electric Power Co. (DC 1942) 44 PUR(NS) 277.] The exception is that in this case, the record indicates that in all probability the stock of the applicant, if placed on the open market, would sell for less than par value, whereas in Formal Case No. 313 the evidence indicated that if the stock of the Potomac Electric Power Company should be placed on the market it would probably sell for more than par. This difference, in our opinion, has no bearing on whether or not the sale of stock at par rather than at its present value constitutes a stock dividend. In simple language, a stock dividend is a distribution of surplus in the form of additional shares of stock rather than in cash; it "takes nothing from the property of the corporation, and adds nothing to the interests of the shareholders." Gibbons *v.* Mahon (1890) 136 US 549. Such is not the case here, for a consideration is to be received for the stock issued and the surplus of the applicant will not be reduced. We must therefore conclude here as we did in Formal Case No. 313 that the issuance and sale of common stock at its par value does not constitute the declaration of a stock dividend.

The commission also found that waiving of the competitive bidding rule was warranted because of the fact that American Telephone and Telegraph Company is the sole owner of all the presently outstanding stock and under New York state law has the preëmptive right to acquire additional issues of this stock.

Commissioner Hankin, in a concurring opinion, stated his reasons for differentiating between his opinion in this case and his dissenting opinion in *Re* Potomac Electric Power Co. (1942) 44 PUR(NS) 277, 280-291. He objected to the procedure followed in the Potomac Case, stating that no conferences and no discussions were held by the commission to outline the evidence to be presented. It appeared to him that issuance of stock by the Potomac Company was part of a "scheme to dissipate what may result to be a trust which the North American Company holds for the benefit of the people of the District of Columbia."

As to the competitive bidding rule, Commissioner Hankin stated that the evidence showed, contrary to the evidence in the Potomac Case, that the American Telephone and Telegraph Company had a preëmptive right to purchase the stock, and under the evidence

submitted it was concluded that the application of the competitive bidding rule in this case would not justify the commission overriding the preëmptive rights.

He considered that in the Potomac Case there was not a sale of a share "with an incremental value in the form of surplus, but a distribution of surplus with a share of stock attached." In the present case it was shown that if the stock were put on the market, it would not bring a price in excess of $100 per share. Sale of the stock would not carry with it a hidden stock dividend. *Re Chesapeake & Potomac Telephone Co. (Formal Case No. 329, Order No. 2403).*

Duration of Service Contract Criticized

THE New York commission, in a rate proceeding, again expressed its opposition to requirements that consumers be obliged to take service for a term in excess of one year unless unusual conditions prevail and the commission grants specific consent. Commissioner Brewster, referring to such a provision, said:

> This provision which subjects the consumer to a further term of one year unless notice is given thirty days before the year expires, when taken into consideration with another provision of the schedule applying an increased minimum charge of $1 for each full 100 therms in excess of 500 therms taken in the month of maximum consumption during the preceding twelve months, becomes unreasonable. A large user would be required to continue payment of a minimum charge, even though he had actually discontinued the use of gas.
>
> This provision should be altered permitting cancellation on thirty days' notice after the expiration of one year. The order herein should direct the company to file a supplement to its schedule canceling this provision and substituting a provision permitting cancellation on thirty days' notice given at any time after one year of service.

Re Central New York Power Corp. (Case 10749).

Contract Carrier Must File Charges

THE duty of a contract carrier under § 809(a) of Art. VIII of the Public Utility Law to file schedule of charges is mandatory, according to a ruling of the Pennsylvania commission on an application for relief from complying with General Order No. 64 establishing uniform rules and regulations for the filing of charges for contract carrier service. Regardless of the provisions of the order, said the commission, the burden which the applicant would be relieved of is contained in the Public Utility Law itself and the commission is without power to excuse a carrier from complying with the fair mandate of the act.

The statute states that it shall be the duty of every contract carrier by motor vehicle to reduce to writing and file with the commission all contracts pertaining to service. It states that no such contract carrier shall engage in the transportation of passengers or property, unless the minimum charges of such transportation have been filed. The commission in construing this section of the statute said:

> That the language of this section is mandatory seems clear beyond doubt. In addition to construing the provisions of the Public Utility Law strictly in accordance with § 58(8) of Art. IV of the Statutory Construction Act of May 28, 1937, P L 1019 (46 P S 558); as being in derogation of common law rights, Day *v.* Public Service Commission (1933) 312 Pa 381, 384, 3 PUR(NS) 103, 167 Atl 565; and as a legislative grant of power, Swarthmore *v.* Public Service Commission, 277 Pa 472, PUR 1923E 367, 121 Atl 488; Blue Mountain Consol. Water Co. *v.* Public Service Commission (1937) 125 Pa Super Ct 1, 17 PUR (NS) 128, 189 Atl 545; a construction must be adopted that will not only construe the section as intending to favor the public interest, which if it conflicts with private interests, the public interest will predominate: Section 52, Art. IV, of the Statutory Construction Act, *supra; Re* Walker (1938) 332

Pa 488, 2 A(2d) 770; but whether or not the thing directed to be done is of the essence of the thing required, National Transit Co. *v.* Boardman (1938) 328 Pa 450, 197 Atl 239. Moreover, words and phrases shall be construed according to rules of grammar and according to their common and approved usage, § 33 of Art. III of the Statutory Construction Act, *supra;* and the meaning of these words must derive their vitality from the aims and nature of the legislation, Federal Trade Commission *v.* Bunte Bros. (1941) 312 US 349, 85 L ed 881, 61 S Ct 580. Specifically, the word "shall" and the phrase "shall be the duty" are mandatory, Kugman *v.* Kamien (1940) 139 Pa Super Ct 538 and Caluker *v.* Banks, La 3 Mart (NS) 532.

The applicant, a foreign corporation, had registered to do business within the commonwealth and made application for the issuance of a contract carrier permit under the grandfather clause of the Public Utility Law. The permit had been granted. Consequently, said the commission, in reply to a contention that the commission might not have jurisdiction over it, the company was not only estopped from questioning the commission's jurisdiction but since it neither sought a rehearing nor appeal from the order granting the permit, the company's status became an adjudicated fact and the order was *prima facie* evidence of that fact.

Moreover, as to the question whether the company was a contract carrier, said the commission, there could be no doubt. *Re Brink's Inc. (Application Docket No. 38466).*

Wage Increase Supports Higher Trucking Rates

An application by Seattle Truck Owners Association for authority to increase rates because of higher wage costs was granted by the Washington Department of Public Service to the extent of a 4 per cent increase, although 7½ per cent was asked. A labor contract between the Teamsters Union and the Truck Owners Association had been modified to grant increased wages and vacation time.

The truck owners represented that there had been an increase in labor costs of about 15.87 per cent and that labor cost was very close to 50 per cent of earned income. In addition it was testified that truck owners had to pay a premium over the wage scale in some cases in order to hold experienced men because of competition of defense plants for labor.

The department, after an analysis of the figures presented, determined that 7 per cent is a fair, just, and reasonable rate of return to be earned upon property used and useful in this type of public service. The commission stated concerning the basis for rates:

> In considering a complete rate structure covering one period or another period, all factors, consisting of (1) revenue, (2) expense, (3) net revenue, (4) rate base, and (5) rate of return, should be in relation to each other. In its final rate of return statement, the department has used the 1941 revenue and 1941 expense is used and adjusted upon the basis of unit costs in 1942 upon 1941 volume.

The operators had not followed this theory but had included operating expenses due to increased volume of business and not alone to increased unit costs upon the same amount of business enjoyed in 1941, although they had been instructed to furnish estimated increases upon the basis of the same amount of business conducted in the same manner in 1942 as in 1941.

A working capital allowance for advance freight charges was denied for the reason that, under the sinking-fund basis used for depreciation, sufficient funds derived from the charges for depreciation expense were available in the general funds of the carriers which could be used for the payment of advance freight charges where payment of freight charges for the account of customers was in conformance with the credit rules of the department. The department said:

To permit petitioners to use an undepreciated rate base on which to earn a fair rate of return and to add to that rate base amounts to be used in the payment of advance freight charges as working capital, which funds have been derived from the funds accumulated as charges for depreciation, would be to permit the calculation of fair return upon duplicate fair value.

Re Seattle Truck Owners Asso. (Cause No. FH-7566).

SEC Announces Views on Allowances to Attorneys

THE Securities and Exchange Commission, in a proceeding under § 11(f) of the Holding Company Act for approval of fees and expenses of a debtor corporation, ruled that the standards governing the payment of fees and expenses prescribed by Chap. X of the Bankruptcy Act should be followed. Thus, among other things, it was noted that the applicants must show that they have not purchased or sold any securities of the corporation after the institution of reorganization proceedings. Enumerating the factors to be considered, the commission stated:

Allowances for services and expenses must be moderate; they must not be so large as to affect the financial soundness of the reorganized enterprise in that the aggregate charges shall not impair necessary working capital or impose an undue burden on the reorganized company; in considering individual applications, the ultimate test is the measure of benefit conferred upon the debtor by the applicant's activities and, as subsidiary considerations, the time properly required to be spent on the matter for which compensation is sought, the necessity of the services rendered, the intricacy of the problems involved, the ability and experience of the applicant, and local rates for similar services. In addition, duplication of effort should be avoided.

The amount of time devoted to a case, said the commission, should not be the final determinant of an allowance, since the time may not have been profitably spent. On the other hand, the result achieved may have been of great value, unrelated to the time required for its accomplishment. In the circumstances presented in this proceeding, showing a lack of substantial progress toward an ultimate reorganization, the commission continued, the time devoted by counsel might properly be regarded as placing a ceiling upon the allowance which counsel might receive. *Re York Railways Co. (File No. 55-85, Release No. 3876).*

Authority Not Required for Limited Service

THE New York commission held that it had no jurisdiction over an application for a temporary certificate to operate a bus line to a war industry where the applicant, a war worker, operated two busses and four station wagons, transporting approximately 130 war workers. Transportation was confined exclusively to workers employed at one plant. Each worker paid a flat charge for transportation. The applicant was not interested in transporting anyone except such workers and his schedule was arranged only to accommodate the shift changes at the plant. The opinion stated:

In my opinion this operation comes within the rule laid down in the Utica-Clayville Bus Co. *v.* Waite, 233 App Div 297, PUR 1932A 370, 252 NY Supp 673, and does not require any authority from this commission. Should this applicant change his operations to accommodate the general public, it will then be necessary for him to obtain a certificate from this commission.

Re Mostert (Case 10953).

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be printed in full or abstracted in *Public Utilities Reports.*

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COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 45 PUR(NS) NUMBER 6

Points of Special Interest

Titles and Index

TITLES

INDEX

Re Arkansas Power & Light Company

[Docket No. 575.]

Public utilities, § 129 — Combined operations — Electric and water property.

1. Water property is not reasonably incidental or economically necessary or appropriate to the operation of electric utility property, and both electric and water consumers would be more efficiently and economically served if the two operations were wholly separate and distinct, p. 325.

Consolidation, merger, and sale, § 22 — Separation of electric and water utilities.

2. A sale of water utility property to a new corporation which will operate water properties only, by a power company operating both electric and water properties, should be approved as in the public interest and as a material aid to proper and adequate regulation when electric customers are to some extent subsidizing water customers, allocation of expenses must be made upon some arbitrary basis, experienced men are the moving and controlling spirit behind the new company, and water customers will receive just as good service, if not better, than they have received from the power company, p. 325.

Consolidation, merger, and sale, § 20 — Purchase price — Minimum value of property.

3. The question of value in a proceeding relating to property transfers is whether or not the minimum value of properties to be purchased is less than the purchase price, p. 326.

Evidence, § 21 — Testimony as to estimates — Purchase price — Property value.

4. Testimony by a company officer that engineers have made estimates of the value of property to be sold is competent only to establish the basis for the agreement between the buyer and the seller, p. 326.

Security issues, § 35 — Jurisdiction of Commission — Foreign corporation.

5. The issuance of preferred and common stock and unsecured notes by a foreign corporation is not within the jurisdiction of the Department, p. 327.

Consolidation, merger, and sale, § 12 — Jurisdiction of Commission — Capitalization of foreign corporation.

6. The Department cannot take cognizance of the capitalization of a newly organized foreign corporation proposing to acquire utility properties within the state except indirectly by not approving a purchase of such properties by a foreign corporation the capital structure of which does not meet with the approval of the Department, p. 327.

Consolidation, merger, and sale, § 42 — Conditions — Voting power of corporation.

7. Approval and consent to the transfer of water utility properties to a newly organized foreign corporation, the corporate structure of which does not fully meet the approval of the Department, should be given only upon condition that the new company amend its articles of incorporation and make a redistribution of voting powers among the holders of its several

classes of stock, when the present arrangement does not make an equitable distribution of voting power, p. 327.

Corporations, § 18 — Voting power.

8. A corporate structure under which the holder of the preferred stock has no voting rights, the holder of Class A common is entitled to one vote for each share held, and the holder of each share of Class B common is entitled to one vote does not make an equitable distribution of voting powers of the corporation when preferred stock is issued at $100 par value, Class A common at $25 par value, and Class B common at $1 par value, while the company is to borrow money from a bank on an open and unsecured note; and the articles of incorporation should be amended to provide that until the bank loan is fully liquidated, each share of preferred stock will have one vote, each share of Class A common stock one vote, and each share of Class B common stock one-fifth of a vote in the management of the affairs of the company, p. 327.

Security issues, § 99 — Bonds — Relation to property value.

9. The issuance of $2,400,000 first mortgage bonds by a water company acquiring utility properties was approved where the minimum value of the properties was found to be not less than $2,902,500, in view of the modification of the previous concept as to debt ratio because of unusual tax burdens, the stability of revenues of water companies, and the fact that the issue was in effect a private issue not to be offered to the public but to be taken by an insurance company as an investment, p. 328.

Intercorporate relations, § 13 — Organization of subsidiaries — Securities — Water companies.

10. Approval was granted for the organization, by a foreign corporation acquiring water properties, of nineteen separate subsidiary corporations and the issuance of securities by them, so that each would acquire and operate the properties supplying some one of the several cities and towns in which the water properties were located, p. 328.

Consolidation, merger, and sale, § 30 — Effect on municipal acquisition.

11. Approval of the transfer of water properties by a power company to a newly organized water corporation should not be withheld because of pending condemnation proceedings instituted by a municipality for the purpose of determining the value of a part of the water properties and the amount to be paid therefor, since the right of the municipality to purchase the properties supplying water service to its inhabitants is given by statute and a transfer of the properties does not in any way diminish, circumscribe, or restrict its right of purchase, p. 329.

Consolidation, merger, and sale, § 19 — Public interest.

Statement that the Arkansas Department of Public Utilities should not give its consent to, or approval of, any sale or purchase of utility property unless this is found to be in the public interest; that is, unless it is found that under the proposed arrangement the public will be as adequately and as efficiently served by the proposed purchaser as it has been served by the proposed seller, p. 324.

Security issues, § 99 — Capitalization ratios.

Discussion of the capital structure of a water company having a small amount of stock in comparison with total investment in properties to be

purchased, in the light of unusual times and the difficulties of forming a utility company of the size under consideration, p. 327.

Consolidation, merger, and sale, § 54 — Value for purchase — Effect on rates.

Statement, in proceedings relating to sale of utility properties, that the proceeding is in no sense one for the determination of reasonable rates and the values found should not have any bearing whatever on the question of rates, p. 329.

[September 30, 1942.]

APPLICATION *for approval of the acquisition and sale of water utility properties and the issuance of securities; granted subject to conditions.*

By the DEPARTMENT: This matter is before the Department upon two applications: One by the Arkansas Power & Light Company, hereinafter sometimes referred to as "the power company," asking the Department to give its consent to and approval of a proposed sale and transfer of the power company's water properties and the franchises to operate them, located in Russellville, Morrilton, Pine Bluff, McGehee, Hamburg, Rison, Fordyce, El Dorado, Camden, Arkadelphia, Brinkley, Newport, Batesville, Wynne, Earle, England, DeWitt, Marion, and Parkin, and to assign a lease of the water properties owned by the city of Gurdon and a franchise from that city to operate them, to the Arkansas Municipal Water Company, hereinafter sometimes referred to as "the new company," a Delaware corporation authorized to do business in Arkansas; the other by the Arkansas Municipal Water Company asking the Department to give its consent to and approval of its proposed purchase and operation of the aforesaid properties and lease. For a more complete description of the properties to be purchased and conveyed reference is made to Exhibit "B" of the application of the power company.

The new company, in its application, asked for the following additional authority:

(a) To execute and deliver to John Hancock Mutual Life Insurance Company $2,400,000 of 4 per cent 25-year bonds to be secured by a first mortgage and collateral trust indenture creating a first lien on the tangible water properties serving Pine Bluff, Arkansas, and the stocks and bonds to be issued by nineteen subsidiary corporations as hereinafter set forth;

(b) To borrow $250,000 from the Land Title Bank & Trust Company of Philadelphia, bearing 5 per cent interest per annum, payable at stated intervals over a period of three and one half years, to be evidenced by an open and unsecured note;

(c) To issue and sell at not less than par the following stocks, to wit:

1. 890 shares of 6 per cent cumulative preferred stock having a par value of $100 per share;

2. 4,440 shares of Class A common stock having a par value of $25 per share;

3. 10,000 shares of Class B common stock having a par value of $1 per share.

(d) That the Department give its consent to and approval of the organ-

ization of nineteen subsidiary Arkansas corporations, the same to be named, to issue the shares of stock, common and preferred, and to execute the 5 per cent first mortgage bonds, as set out in Par. 9 of its application and there more particularly described.

The applications were simultaneously filed. Thereupon the Department entered an order consolidating them and directing further procedure upon either to be had under Docket No. 575.

The cities and towns of Hamburg, Dewitt, McGehee, Earle, Wynne, Arkadelphia, and Parkin filed petitions for leave to intervene in opposition to the transfer and purchase of the water properties owned by the power company in said respective cities and towns.

In the order consolidating the applications the intervening cities and towns, and all other cities and towns in which is located property proposed to be sold, were granted the right to intervene and the privilege to be heard. The intervening cities and towns, and the applicants, were directed to supply, in the form of exhibits, additional information specifically set out in the consolidating order. A copy of the consolidating order was served upon the applicants and the intervening cities and towns, and notice was given the mayors of all cities and towns in which is located any of the property proposed to be sold, advising them of the filing of said applications, granting them the right to intervene and the privilege of being heard.

Thereafter the Department set the matter for hearing on the 24th day of September, 1942. Notice of this hearing was given the applicants and the mayors of all cities and towns being supplied water service by the properties proposed to be sold.

On or prior to the date of the hearing the intervening cities and towns withdrew their respective interventions, with the exception of the cities of DeWitt and Wynne.

The Department held a formal hearing on September 24th and 25th.

Findings

The statute creating the Department and giving it powers and jurisdiction, among other things, provides that: "With the consent and approval of the Department, but not otherwise . . . . Any public utility may sell, acquire, lease, or rent any public utility plant or property constituting an operating unit or system." (Section 2117, Pope's Digest.) This section clearly indicates that the Department should not give its consent to or approval of any sale or purchase of any utility property unless the same is found to be in the public interest, i. e., unless it is found that under the proposed arrangements the public would be as adequately and as efficiently served by the proposed purchaser as it was then being and had been served by the proposed seller.

The act creating the Department also provides that: "The power of public utilities to issue stocks, stock certificates, bonds, notes, and other evidences of indebtedness, in case of public utilities incorporated under the laws of this state, and to create liens on property in this state, in case of public utilities incorporated under the laws of any state or foreign country, is a special privilege, the right of supervision, regulation, restriction, and control of which is, and shall continue to

be, vested in the state, and such power shall be exercised as provided by law and under such rules and regulations as the Department may prescribe." (Section 2118, Pope's Digest).

From these two sections it is seen that the issues presented by the consolidated applications may be divided into two parts:

(a) Whether the sale, transfer, and purchase of the property as proposed would be in the public interest; and

(b) Whether the Department should authorize the issuance of $2,400,000 of 25-year 4 per cent bonds to be secured as hereinabove set out.

These issues will be treated separately.

Sale and Purchase of the Properties

The Department is mindful of the efforts and accomplishments of the Arkansas Power & Light Company now, and in years gone by, in helping develop the resources of this state through the expansion of electric facilities. The company now owns a large and extensive electric transmission system serving more than 340 communities in 61 of the 75 counties of the state. In the course of the development and expansion of its electric properties it appeared to the power company that in some instances it was expedient, if not necessary, to acquire, construct, and operate water properties along with electric properties, and this the power company did. The expansion of the company's water properties did not, and necessarily could not, keep pace with the expansion of its electric facilities, the result being that today the probable fair value of its water properties is less than 10 per cent of its electric properties, and the revenue from the water properties bears about the same proportion to its electric revenue.

This situation caused the executives of the power company to devote more or less of their time and attention to the electric service and to some extent neglect the water service.

[1, 2] The power company is a subsidiary of the Electric Power & Light Corporation, which is a public utility holding company of the Electric Bond & Share System. The Securities and Exchange Commission has indicated that water property is not reasonably incidental or economically necessary or appropriate to the operation of electric utility property. The Department concurs in this view and believes that both electric and water consumers would be more efficiently and economically served if the two operations were wholly separate and distinct.

The evidence very clearly shows that because of the system of accounting used by the power company, the electric customers of the company were to some extent subsidizing its water consumers, and that the water properties and operations were not bearing their just proportion of general expenses, nor adequate charges for power.

The Department believes that where a company operates two departments, such as electric and water, that each department should be charged with a reasonable and just proportion of all joint expenses. Since many of these expenses cannot be allocated except upon some arbitrary basis, the Department believes that a separate operation by separate companies would be in the public interest and become a

material aid to proper and adequate regulation.

Men experienced in financing and operating public utility properties are the moving and controlling spirit behind the organization of the new company. In their testimony they detailed the proposed financial setup and operating personnel which they intend to employ, and the Department believes, since the proof shows that they are buying these properties for an investment and not speculation, that the new setup will be just as successful, if not more so, in supplying water service to the public as has been the selling company.

The operating personnel of the new company will have no concern nor be charged with any duties with respect to the operation of electric properties, and will therefore be able to devote its entire time to the operation of the water properties.

The Department, therefore, believes and finds, that the purchase by said new company and its operation of the properties to be purchased will enable the customers, both present and future of the water properties to receive just as good service, if not better, than they have heretofore or probably in the future would receive from the power company.

[3, 4] The price to be paid for the properties is $2,902,500, subject to certain adjustments. The question on the matter of value, to be determined by the Department, is whether or not the minimum value of the properties to be purchased is less than the purchase price. There was some testimony that one engineering firm of good reputation recently estimated the reproduction cost of the properties to be sold at $3,888,159. This figure included the water property at Stuttgart, Arkansas. This property was sold prior to the filing of the applications herein for $187,500. There was some testimony also that another engineering firm representing the interests that proposed to purchase the $2,400,000 of bonds had estimated the value of the property, exclusive of Stuttgart, to be $3,400,000. Neither of the applicants placed this testimony in the record through qualified representatives of the engineering firms, but was content with the testimony of the president of the Arkansas Power & Light Company that these engineers had made such estimates. Such testimony was competent only to establish the basis for the agreement between the buyer and the seller.

The chief engineer of the Department, in the short time allowed him and his staff, which at present is inadequate, compiled an estimate of the original cost of the properties involved and said that their undepreciated original cost was approximately $3,383,345, and that the depreciated value was $2,909,751. He explained that neither of these figures was to be taken as representing the present fair value of the properties.

For the purposes of this proceeding the Department finds that the minimum value of the property involved is not less than $2,902,500, the amount which the purchaser is to pay therefor. It is understood that the finding of this minimum value shall not be construed or be taken as a finding with respect to a rate base, nor for any other purposes than those indicated in this finding and order.

Capital Structure of the Purchasing Company

[5–8] Since the Arkansas Municipal Water Company is a Delaware corporation, its issuance of preferred and common stocks and unsecured notes is not within the jurisdiction of the Department, and cognizance could not be taken of either except indirectly, by not approving a purchase of utility property in Arkansas by a foreign corporation, the capital structure of which did not meet with the approval of the Department. Under ordinary circumstances the capital structure and setup of the Arkansas Municipal Water Company would probably not be approved by the Department because of the small amount of stock, preferred, and especially common, which it will issue, in comparison with the total investment in the properties to be purchased.

The corporate structure of the new company contains and omits many things to be desired. However, it cannot be overlooked that these are unusual times, and the difficulties of forming a utility company the size of the new company must be taken into consideration.

After a careful study of the situation, the most promising feature in the formation of the new company appears to the Department to be the integrity and known reputation of the new company's managing and operating officials, and that of those who are investing their money in it.

The Department is convinced that John Hancock Mutual Life Insurance Company would not invest $2,400,000 of its policyholders' funds in a new enterprise without having absolute confidence in the officials of such enterprise, nor without taking every due precaution and safeguard to see that the security for the investment is adequately maintained and that proper service is rendered thereby, without which the properties could not continue to function under the laws of Arkansas and the rules and regulations of this Department.

However, the Department does not feel justified in giving its approval and consent to the transfer, except upon condition that the new company amend its Articles of Incorporation and make a redistribution of the voting powers, on a more equitable basis, among the holders of its several classes of stock.

The testimony shows that the company will issue 890 shares of $100 par value preferred stock; 4,440 shares of Class A common stock of $25 par value; and, 10,000 shares of Class B common stock of the par value of $1 per share.

Under the proposed setup the holder of the preferred stock has no voting rights, the holder of Class A common is entitled to one vote for each share held, and the holder of each share of Class B common is entitled to one vote. While it was shown by the evidence that in selling the preferred stock and the Class B common stock the purchaser of the preferred would have the privilege of also purchasing at par one share of the Class B common, and that a purchaser of the Class A common would have the privilege of purchasing one share of Class B common for each four shares of his purchase of Class A, the Department does not feel that the foregoing arrangement makes an equitable distribution among stock investors of the voting powers of the corporation.

Therefore, the Department finds that it should condition its approval of the sale and transfer of the properties upon an amendment of the Articles of Incorporation of the new company whereby, until the bank loan is fully liquidated, each share of the preferred stock would have one vote, each share of the Class A common stock would have one vote, and each share of the Class B common stock would have one-fifth of a vote in the management of the affairs of the company.

Bond Issue

[9] The new company proposes to issue and sell at 4 per cent above par, $2,400,000 of 4 per cent 25-year bonds, these bonds to be secured by a first lien created by the execution of a first mortgage and collateral trust indenture covering the water properties used and useful in supplying water service to the city of Pine Bluff and its vicinity.

The trust indenture provides that the bonds will be further secured by a pledge of all of the common and preferred stocks and first mortgage bonds issued by the nineteen subsidiary corporations, as described and set forth in Par. 9 of the new company's application.

While there is not sufficient evidence before the Department from which the maximum values of these properties may be fixed, there is sufficient testimony to justify the Department in finding that the minimum value of said properties is not less than $2,902,500.

Upon the concept of public utility financing prevailing a few years ago, $2,400,000 would be a rather high issue of bonds. But, because of the unusual tax burdens now existing upon corporations, the previous concept is being modified, and issues are now being approved for a higher percentage of the actual fair value of the property than was heretofore thought to be practicable.

Experience has shown that the revenues of water companies during periods of depression or financial stress are much more stable than are those of other public utility operations, and that water companies lose a less percentage of their gross revenue and of their customers.

Furthermore, the testimony shows that this issue is in effect a private issue and will not be offered to the public, and will be taken by John Hancock Mutual Life Insurance Company as an investment.

The Department, therefore, finds that it should give its consent and approval to the issuance, sale, and the securing of said bond issue, all to be done in the manner hereinabove set out.

Subsidiaries

[10] The new company proposes to organize some nineteen individual Arkansas corporations, each of which will acquire and operate the property supplying some one of the several cities and towns in which the property to be purchased by the new company is located. The names of the companies and the towns in which they will acquire and operate their respective properties are set out in Par. 8 of the new company's application.

The Department is of the opinion that the organization of the said nineteen separate corporations and the issuance of common and preferred stocks and bonds as proposed by them,

should be approved, and that the Arkansas Municipal Water Company should be authorized to convey to each of said proposed nineteen corporations, and each of them should be authorized to purchase, the respective properties proposed to be conveyed to them.

Intervention of the City of DeWitt

[11] In its intervention the city of DeWitt sets forth the fact that it has determined, and has taken preliminary steps, to purchase the water property serving it and its vicinity, and that it has filed condemnation proceedings in the circuit court of Arkansas county for the purpose of determining the value of said property and the amount to be paid therefor. It therefore asks that in the event the prayer of the applicants is granted that the water properties serving DeWitt be excluded from the sale and transfer.

The right of the city to purchase the water properties supplying water service to its inhabitants is given by statute, and a transfer of the properties does not, and will not, in anywise diminish, circumscribe, or restrict the city's right of purchase.

It appears that the Arkansas Municipal Water Company is a party-defendant to the condemnation proceedings initiated by the city. Of course, this was necessary because the contract for the purchase of the properties has been executed.

Frequently much time elapses between the filing of condemnation proceedings and the acquiring of the property involved. Because of this fact, and since DeWitt will lose no right of procedure or otherwise, and could not possibly be delayed in any respect because of an order of this Department or the transfer of the property, the Department will not withhold approval of the transfer of the property located there.

Intervention of the City of Wynne

It appears from the record that the city of Wynne at one time owned the electric and water properties serving said city; that it conveyed said properties to the Arkansas Power & Light Company, and in the contract of conveyance, and in the ordinance granting that company a franchise to operate in said city, the city provided that should Arkansas Power & Light Company ever convey said properties, they must be purchased, conveyed to, and operated thereafter by the same party, and that the title to the water property and its operation should not be separated from the title and operation of the electric properties. Therefore, unless the city of Wynne agrees to the modification of its contract and franchise, the water properties of that city could not be conveyed and operated separate and apart from the electric properties.

The probability that the parties may be able to reach an agreement with the city of Wynne is sufficient to justify the Department in granting its approval of the sale and conveyance of the water property serving that city, which approval, of course, will be subject to securing such modification, and in the event the same is not secured the properties cannot be conveyed.

Rates

This proceeding is in no sense one for the determination of reasonable

rates, and the values found herein should not have any bearing whatever on the question of rates.

At the hearing, and in the application of the new company, nothing was said concerning the rates at which the new company proposes to supply water service in the several cities and towns. Under the law, the new company takes these properties impressed with the public service, and must discharge the same public duties as have heretofore been performed by the selling company. In other words, the new company takes the properties subject to the obligations now incumbent upon the seller. This would require the new company to continue water service at the present lawful rates in effect for the service now being supplied by the selling company, subject, however, to the power of the councils of the several municipalities being served, and of the Department to change and alter said rates from time to time.

ORDER

It is therefore *ordered*:

(1) That the interventions heretofore filed herein hereby are dismissed.

(2) The dismissal of the intervention of the city of DeWitt shall be without prejudice to that city with respect to any proceeding which it now has pending or which it may hereafter file in any court, or before the Department, with respect to the condemnation of the properties serving it, or to the completing of the purchase thereof.

(3) The Department hereby gives its approval of and grants its authority to the Arkansas Power & Light Company to sell, and to the Arkansas Municipal Water Company to purchase and operate, the water properties serving the cities and towns hereinabove described, subject, however, to the provision that the property at Wynne shall not be sold unless that city expressly consents thereto.

(4) The approval granted by Par. 3 of this order is also subject to the condition that the new company shall, within thirty days of the date hereof, file with the Department a certificate to the effect that it has amended its Articles of Incorporation whereby the holders of each share of the preferred stock and each share of its Class A common stock shall have one vote, and the holders of its Class B common stock shall have one-fifth of a vote at all stockholders' meetings, at least until the bank loan has been liquidated.

(5) The Department approves and grants authority for the organization of the several nineteen corporations and the issuance of common and preferred stocks and bonds, to wit:

Name of Subsidiary	Common Stock (No Par)	Securities 5% Preferred Stock (Par: $10)	5% First Mortgages
Arkadelphia Water Company	100 Shares		$60,000
Batesville Water Company	" "	4,000 Shares	
Brinkley Water Company	" "	2,000 "	
Camden Water Company	" "		$130,000
DeWitt Water Company	" "	4,000 "	
Earle Water Company	" "	1,500 "	
El Dorado Water Company	" "		$500,000
England Water Company	" "	1,500 "	
Fordyce Water Company	" "	2,500 "	
Gurdon Water Company	" "		
Hamburg Water Company	" "	1,000 "	
Marion Water Company	" "	500 "	
McGehee Water Company	" "	3,500 "	
Morrilton Water Company	" "	3,500 "	
Newport Water Company	" "	4,000 "	
Parkin Water Company	" "	700 "	
Rison Water Company	" "	800 "	
Russellville Water Company	" "		$60,000
Wynne Water Company	" "	4,500 "	

(6) The Department hereby approves and authorizes the Arkansas Municipal Water Company to convey to the said several corporations authorized herein to be organized, and each of said corporations to purchase the respective properties shown to be conveyed to and purchased by them, said conveyance to be made for the consideration of all of the common and preferred stocks and bonds to be issued by the said several corporations as hereinabove indicated.

(7) The Department hereby consents to and approves the issuance by the Arkansas Municipal Water Company of $2,400,000 of 4 per cent 25-year bonds and the sale of them at 4 per cent above par, and consents to and approves the execution of a first mortgage and collateral trust indenture covering the water properties serving the city of Pine Bluff for the purpose of securing said bonds, and also consents to and approves the pledge of all of the preferred and common stocks and first mortgage bonds to be issued by the said several subsidiary corporations.

(8) Anything contained in this finding and order shall not be construed as a finding or determination of the reasonable fair value of the property to be conveyed, nor as a finding or determination of a rate base.

(9) The Arkansas Power & Light Company shall, within six months from the date hereof, report to the Department the entries which it proposes to make upon its books and records for the purpose of clearing them of the amount, or amounts, at which the properties to be conveyed are presently entered thereon.

(10) The Arkansas Municipal Water Company, and each of its subsidiaries proposed to be organized, shall report to the Department, within sixty days of the closing of each of the several transactions, their respective acts in the disbursement of the funds which they respectively will receive, and the disposition of the securities which they will respectively issue.

(11) That, before making any disposition of the proceeds received from the sale of the properties herein involved, the Arkansas Power & Light Company shall report to the Department the disposition and use which it

proposes to make of the said proceeds and how the same will be used, and it shall secure the approval of the Department before making any disposition or use thereof.

(12) That the Arkansas Municipal Water Company and its several said subsidiary corporations shall continue to supply water service to each of said several cities and towns, respectively served by them, at the lawfully established rates now on file with the Department, and shall file with the Department, not later than the date on which the operation of said properties is taken over, an agreement to keep said rates in effect. Said presently effective rates, however, to be subject to change by the council of the respective municipalities being served by the properties purchased, and by the Department.

(13) That the Department reserves for future determination the disposition which the company shall make of the items of organization and financial expenses, and the ledger entries that it shall make with respect thereto.

(14) The Department retains jurisdiction of this cause for the purpose of making such other and further orders as may be necessary or expedient for the purpose of consummating all of the transactions herein conditionally or otherwise approved.

UTAH PUBLIC SERVICE COMMISSION

Public Service Commission of Utah

v.

Mountain States Telephone & Telegraph Company

[Case No. 2503.]

Rates, § 649 — Procedure — Hearing — Complaint verified by Commissioner.

1. The fact that a complaint instituting a rate investigation was verified by Commissioners is not a valid objection to the conduct of the hearing by such members of the Commission, p. 334.

Rates, § 640 — Investigation — Interference with war effort.

2. A hearing on a rate complaint should not be postponed on the ground that the rate investigation would unduly interfere with the war effort of the company under investigation when only one witness is presented who is any way closely connected with war activities and he states that his presence at the hearing does not constitute an interference with the company's prosecution of the war effort, p. 334.

Discrimination, § 181 — Telephone rates — Interstate and intrastate service.

3. The charging by a telephone company of higher rates for intrastate toll

service than for interstate toll service is unlawfully discriminatory when there is no substantial difference in the conditions under which the services are rendered, p. 338.

Rates, § 190 — Reasonableness — Presumption — Rates approved by Federal Commission.

4. Rates established for interstate toll service and approved by the Federal Communications Commission are assumed to be just, reasonable, and compensatory, p. 340.

Return, § 72 — Reasonableness as a whole — Telephone service — Local and long distance.

5. A telephone company is not entitled, under any constitutional or other requirement, to earn a reasonable return on its investment in intrastate toll property considered separately and apart from all other property of the company in the state, p. 340.

Discrimination, § 239 — Interstate and intrastate toll rates — Scope of investigation.

6. No good reason exists for embarking upon a time-consuming and expensive investigation to separate and segregate intrastate toll property, expenses, and revenues before eliminating discrimination in telephone toll rates favoring interstate telephone users, when it is not contended that there will be confiscation of property on the basis of operations within the state, there is no proof that reduction of intrastate toll rates to the level of interstate toll rates would result in any unreasonable or unjust discrimination in any class of intrastate service, and intrastate toll operations are inextricably intermingled with exchange operations, p. 341.

Discrimination, § 19 — Rates — Elimination of difference — Interstate and intrastate tolls.

7. Discrimination in telephone rates favoring interstate users as against intrastate users of the service should be eliminated by reducing the intrastate rates to the level of the interstate rates, p. 341.

Discrimination, § 14 — Rates — Showing of damage or prejudice.

8. Evidence that traffic actually moves under both interstate and intrastate toll schedules of a telephone company is sufficient to show damage or prejudice to users of intrastate toll service who are forced to pay a higher rate for that service than has been paid by users of interstate service, which latter service is rendered under substantially the same conditions and with the same facilities, p. 342.

[September 18, 1942.]

INVESTIGATION *of differences between rates charged by a telephone company for intrastate telephone service than for interstate service; reduction of intrastate rates ordered.*

By the COMMISSION: In October, 1941, this Commission, by complaint upon its own motion, instituted an investigation into the differences between rates charged by the Mountain States Telephone and Telegraph Company (hereinafter called the company) for intrastate message toll telephone service and the rates charged by it for interstate service interchanged between

the company and its parent, the American Telephone and Telegraph Company (hereinafter referred to as the American Company). The investigation was instituted to determine whether the intrastate toll rates collected by the company resulted in unjust discrimination against intrastate commerce and the users of intrastate message toll telephone service as compared with the company's interstate rates for service handled jointly by it and the American Company.[1] The complaint, in the nature of a show cause order, directed the company to either reduce its intrastate toll rates to the level of the interstate scale of rates or answer the complaint and proceed to public hearing and investigation. The company chose to answer the complaint.

Subsequent to the filing of the company's answer, a number of informal conferences, attended by the Commission and its staff and officials and representatives of the company, were held. At these conferences the company submitted statistical information as well as other data and arguments as to why its intrastate toll rates should not be reduced to the level of the interstate toll rates. Nothing submitted at these informal conferences, in the opinion of the Commission, justified the discontinuance of the investigation which had been instituted.

[1, 2] After due notice to the company as required by law and the rules of the Commission, the matter came on for hearing on the 28th day of April, 1942. At the opening of the hearing the company interposed two objections and a motion. It objected to the conduct of the hearing by members of this Commission on the ground that they were prejudiced by reason of the fact that they verified the complaint which instituted the investigation. It also objected to the holding of the hearing for the reason that it would unduly interfere with the war effort of the company. Its objections were denied and the company's motion for an order vacating the setting of the case for hearing and postponing further action until termination of the war was also denied.

It is a well-recognized and common procedure for regulatory Commissions to institute investigations by complaint of the Commission itself. This Commission has followed this procedure for many years and it is in accordance with its rules that the complaint is verified. The purpose of proceeding in this manner is to narrow the issues and expedite the disposition of the investigation thereby instituted. The statutes of this state specifically provide for such a procedure on the part of this Commission by the filing of a "petition or complaint in writing."[2] The verifying of the complaint was a formality in keeping with the Commission rules. The company has been afforded every opportunity to present evidence relative to the issues joined by the complaint and answer. By whatever name the complaint in this proceeding may be called, its real purpose was to set in motion the investiga-

[1] In this case Utah intrastate toll rates are compared with the rates charged by defendant company for interstate service handled jointly with the American Company—interterritorial service—and no comparison is made with the rates for interstate, *intracompany* service of the company. Consequently, unless otherwise clearly indicated the words "interstate rates" or "interstate service" as used herein will refer to interstate, interterritorial rates or service.

[2] 76-6-9, Revised Statutes of Utah, 1933, as amended.

tion by the Commission and to enable expeditious disposition of the investigation. While called a complaint, it is no different from a show cause order or an order of investigation which calls upon the company to do certain things or state in writing why it does not do so as a foundation for further action on the part of the Commission.

The Commission views the other objection of the company as frivolous. Only one witness was presented by the company who was in any way closely connected with any war activities of the company, and he stated upon the record that his presence at the hearing did not constitute any interference with the company's prosecution of its war efforts.

Evidence was presented by members of the Commission's staff and by representatives of the company at the hearing which extended over five days. Following the conclusion of the hearing, briefs were filed on behalf of the company and the staff of the Commission. After a careful analysis of the testimony and exhibits and a consideration of the arguments presented in the briefs, the Commission now finds and determines the following facts and conclusions:

The company is a telephone utility carrying on operations in Utah, Arizona, Colorado, Idaho, Montana, New Mexico, Wyoming, and El Paso county, Texas. So far as its operations in the state of Utah are concerned it is subject to regulation by this Commission in accordance with the statutes of this state. It is an Associated Company of the Bell System[3] and is a subsidiary of the American Company which owns 73.23 per cent of its voting stock—351,875 out of a total of 480,497 shares. The remaining 128,622 shares are scattered among 4,354 stockholders.

The American Company exercises "sole" and "direct" control over the company, and the entire block of stock owned by the American Company was voted at the last stockholders' meeting when the company's governing board of directors was chosen.

The company, by contract, is licensed by the American Company to use within its territory, as defined in the contract, all telephone equipment covered by patents owned or controlled by the American Company and is prohibited from disposing of such equipment without the consent of its parent company. Under this contract the American Company furnishes "advice" and "assistance" in all fields of the telephone business of the company and extends to the company the privilege of using connections between its system and other associated Bell companes, such connections maintained by the American Company.

The company operates 59 central offices or exchanges in Utah, serving all densely populated areas of the state including all of the larger cities and adjoining territories. The area in Utah actually served by it is somewhat less than half of the total area of the state and the telephones which it has in serv-

[3] For a general discussion of the Bell system including the American Telephone and Telegraph Company and its regional operating subsidiaries and the methods employed in coördinating the whole enterprise see the report of the Federal Communications Commission on the Investigation of the Telephone Industry in the U. S. House Document No. 340, 76th Congress, 1st Session, and The Bell Telephone system by Arthur W. Page, vice president of the American Telephone and Telegraph Company (1941).

ice constitute approximately 95 per cent of the telephones in operation in Utah. Two toll lines of the American Company cross the state, one going east and west and the other north and south. Both of these lines connect with the facilities of the company at Salt Lake City. The American Company connects with the facilities of the company at only one other point, Cedar city. No exchange equipment in the state is owned or operated by the American Company and its toll lines do not connect with any subscriber stations. The American Company does not maintain any employees at any of the 59 exchanges operated in the state by the company. All of the operations at these exchanges are carried on by employees of the company, and the company has business relations with telephone subscribers for both local exchange and toll message service.

The company publishes separately tariffs covering (1) rates for Utah intrastate toll service and (2) rates for interstate toll service. Its interstate rates are based upon the tariff of the Long Lines Department of the American Company, known as FCC Tariff No. 132. By virtue of a "concurrence" filed by the company with the Federal Communications Commission in November, 1941, it formally adopted that tariff as its own tariff for interstate message toll telephone service.

Under the two schedules of rates the initial period charges for station-to-station and person-to-person toll calls, both for day and for night and Sunday service, both intrastate and interstate, are the same for all rate-mile distances up to 16 miles; the station-to-station and person-to-person charges for *day* service are the same for distances of 19 to 22, 25 to 28, 31 to 34, and 37 to 40 miles (both inclusive in each case) but the charges for such intrastate service are higher for distances of 17 and 18, 23 and 24, 29 and 30, 35 and 36 miles, and for distances over 40 miles than are the charges for such interstate service. The initial period rates for person-to-person *night and Sunday* service are the same under both schedules for distances of 19 to 22, 25 to 28, 31 to 34, and 37 to 46 miles, but the intrastate rates for such service for distances of 17 and 18, 23 and 24, 29 and 30, 35 and 36 miles, and for distances over 46 miles, are higher than the charges for comparable interstate service. Further, the initial period charges for night and Sunday station-to-station calls are the same under both schedules of rates for distances of 19 to 22, 25 to 28, 31 to 34, and 37 to 86 miles. The intrastate rates for such service for distances of 17 and 18, 23 and 24, 29 and 30, 35 and 36 miles, and distances over 86 miles, are higher than the charges for interstate service of the same kind for comparable distances.

In addition to the foregoing differences in the company's initial period rates, its overtime charges on intrastate toll calls are, in some instances, higher than the interstate overtime charges, and it collects report charges in connection with uncompleted intrastate toll calls but does not collect report charges on uncompleted interstate calls.

The differences in the two schedules of rates maintained by the company are admitted. The company, however, denies that these differences result in

unjust discriminations or preferences. The question here presented is whether discriminations prohibited under applicable Utah law have resulted from the maintenance of these different schedules of rates. The pertinent statutory provisions are Art. 8 of Chap. 3 of Title 76, and Art. 4 of Chap. 4 of the same Title, Revised Statutes of Utah, 1933, as amended. They provide as follows:

76–3–8

"No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any person, or subject any person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, or facilities, or in any other respect, either as between localities or as between classes of service. The Commission shall have power to determine any question of fact arising under this section."

76–4–4

"Whenever the Commission shall find after a hearing that the rates, fares, tolls, rentals, charges or classifications, or any of them demanded, observed, charged, or collected by any public utility for any service . . . are unjust, unreasonable, discriminatory, or preferential, or in anywise in violation of any provisions of law, . . . the Commission shall determine the just, reasonable, or sufficient rates, fares, tolls, rentals, charges . . . to be thereafter observed and in force, and shall fix the same by order. . . ."

The differences between the intrastate and interstate schedules of rates for message toll telephone service noted are not present in the company's schedules of rates for other types of toll communication, such as private line services and teletypewriter service. The rates at which intrastate private line and teletypewriter service is rendered by the company are the same as the rates it charges for interstate service of the same kind.

No distinction exists between the type, quality, or value (to the subscriber) of interstate and intrastate message toll telephone service rendered by the company. Both involve the use of substantially the same facilities. The intrastate toll call brings into use only the facilities of one company, however, whereas the interstate toll call requires the use of the facilities of at least two companies and in most instances the facilities of three companies.

The following is an illustration of the differences between the intrastate and interstate schedules of rates. An intrastate station-to-station day call from Richfield, Utah, to Salt Lake City, Utah, carries a charge of 95 cents for the initial period, while a similar call from Richfield, Utah, to Elko, Nevada, can be made for a charge of only 85 cents for the initial period. The rate-mile (air-line) distance of the call which is purely intrastate is 138 miles, while the rate-mile (air-line) distance of the interstate call is 243 miles. In connection with the intrastate call only the facilities of the company at Richfield and Salt Lake City and between those points are used. The interstate call, however, involves the use of exactly the same facilities at and between Richfield and Salt Lake City, where the call is transferred to the circuits of the American Company. Facilities

of the American Company carry the message to the point where connection is made with the Bell Telephone Company of Nevada and the facilities of that company are necessarily used to complete the call. Yet the interstate call can be made by a subscriber for 10 cents less than he can make the shorter intrastate call.

The foregoing and several other examples of the differences in the two scales of rates are set forth in the following chart:

Examples of Initial Period Toll Message Rates

Calls From:	To:	Rate Mile Distance	Station-to-Station, Day
* Richfield	Salt Lake City, Utah	138	$0.95
** Richfield	Elko, Nevada	243	0.85
* Salt Lake City	Cedar City, Utah	220	1.35
** Salt Lake City	Las Vegas, Nevada	363	1.10
* Salt Lake City	Beaver, Utah	176	1.15
** Salt Lake City	McGill, Nevada	180	0.75
* Logan	Provo, Utah	106	0.75
** St. George	Las Vegas, Nevada	100	0.55
* Salt Lake City	Hurricane, Utah	257	1.45
** Salt Lake City	Los Angeles, Calif.	570	1.45
* Ogden	Kanab, Utah	291	1.55
** Ogden	Portland, Oregon	620	1.55

* Intrastate
** Interstate

Under the company's telephone toll schedules an interstate call which is more than double the distance of an intrastate call of the same type can be made for the same charge, and the rate for an interstate call may be as much as 35 per cent lower than the rate for a similar intrastate call of the same distance, and under these schedules greater charges are made for shorter distances than for longer distances over the same route and in the same direction.

The conditions and circumstances under which the company is and has been rendering intrastate toll service are substantially the same as the conditions and circumstances under which it is and has been rendering interstate toll service, and substantially the same facilities are used in connection with the rendition of the two services, except that the interstate toll calls in many instances may involve the use of additional, but like, facilities of the American Company and one or another of the Associated Bell Companies.

[3] Under these circumstances the practice of the company of charging higher rates for intrastate toll service for distances in excess of 16 miles than it charges for interstate toll service for comparable distances is the maintenance of unreasonable differences as to rates and charges and constitutes the granting of preferences or advantages to users of interstate toll service and the subjecting of users of intrastate toll service to prejudicial and disadvantageous treatment in violation of the statute.

The company's evidence bearing on the cost per circuit-mile of intrastate and interstate service, the average revenues per message and average length of haul interstate as compared with

the averages for intrastate service, the density of population in the entire state of Utah[4] as compared with the figures for the entire United States and for the states of Michigan and Pennsylvania, etc., fails to show any substantial difference between the company's interstate toll business and its intrastate business. The company's evidence does not establish that its intrastate toll service is rendered under conditions substantially different from those under which it provides interstate toll service. Such differences in operating conditions as may exist certainly do not justify the exaction of a higher charge for intrastate service than for comparable interstate service.[5] The evidence in this case does not justify a differential between Utah intrastate rates and the company's rates for interstate toll service originating (or terminating in the case of collect calls) in the state of Utah. While it is true that some portions of Utah are mountainous, and great portions of the United States are prairie or level country, it is also true that the company's interstate traffic moving in and out of Utah must traverse the same mountainous territory as is traversed by the Utah intrastate traffic. Density of population comparisons between Utah and Michigan and Pennsylvania and Utah and the United States offered by the company have not been helpful. No figures or comparisons were supplied relating to the particular areas in those states actually served by the companies, nor the area actually served in the United States by the Bell System. Similarly, the company's comparisons on nation-wide operating conditions, density of traffic, costs per circuit mile of plant, with such factors in Utah, if to any extent pertinent to the matter under investigation are entitled to but little, if any, weight. If the comparisons had been made after relating the various factors to Utah intrastate toll and that interstate toll service which originates in Utah (or terminating in Utah in the case of collect calls) and handled jointly by the company and the American Company, the comparisons might have been more helpful to the Commission. The fact that interstate service involves the use of *more* facilities than are used for comparable intrastate service might justify the collection of higher rates for interstate service than for intrastate service.[6] Here we find, however, that the company charges higher rates for its intrastate business. Furthermore, the company's toll rates are not based on the cost of particular messages, but are so established as to contribute toward a reasonable and compensatory over-all return from both toll and exchange operations.

The differences in the charges for overtime service under the company's interstate and intrastate schedules are

[4] The company introduced no evidence comparing the density of population in the area actually served by the company with the area actually served by any other company nor comparing the average number of telephones per 100 population in the territory served by the company with the average number of telephones per 100 population in any territory served by any other company.

[5] Michigan Bell Teleph. Co. v. Public Service Commission (1941) 297 Mich. 92, 39 PUR (NS) 111, 297 NW 198; Washington Department of Public Service v. Pacific Teleph. & Teleg. Co. (Fed CC 1941) 37 PUR(NS) 129; Bell Teleph. Co. v. Public Utility Commission (1939) 135 Pa Super Ct 218, 28 PUR (NS) 266, 5 A(2d) 410, appeal dismissed (1940) 309 US 30, 84 L ed 563, 32 PUR(NS) 304, 60 S Ct 411.

[6] Bell Teleph. Co. v. Public Utility Commission. *supra.*

just as unreasonable and unjustly discriminatory and preferential as the differences in the initial period rates, and for the same reasons. Likewise, the collection of report charges in connection with uncompleted intrastate calls constitutes an unreasonable and unjust discrimination against intrastate commerce. To collect report charges on uncompleted intrastate calls and not collect report charges in connection with uncompleted interstate calls originating in Utah (or in connection with uncompleted collect interstate calls terminating in Utah) is to maintain unreasonable differences as to rates and charges, and to grant a preference to the user of interstate toll service and subject the user of intrastate toll service to a prejudice or disadvantage. At the hearing, a witness for the company acknowledged that he knew of no reason why report charges should be collected in one case and not the other, and took the position that report charges should be collected on all uncompleted toll calls whether intrastate or interstate. Unless and until the company changes its practice of not collecting report charges on uncompleted interstate toll calls, the Commission sees no reason why the users of intrastate toll service should be discriminated against, and the company has advanced no reason why such discrimination should be permitted to continue.

[4] The interstate rates of the company do not come within the jurisdiction of this Commission. They have been voluntarily established by the company and approved by the appropriate regulatory body, the Federal Communications Commission. This Commission must assume, therefore, that the interstate toll rates are just, reasonable, and compensatory to the company.[7] The company has made no claim that its interstate rates are unreasonable or noncompensatory.

The company's tariff for intrastate toll service provides for certain "special" or "exception" 5-cent and 15-cent rates for station-to-station and person-to-person service between certain communities in the state. These rates were voluntarily established by the company in the years 1913 to 1922 and, because of the special circumstances which prompted the establishment of these exceptions to the basic mileage schedule in the first place, the company has never sought to have them increased. These special rates are lower than the charges that would be collected if the basic mileage schedule of either the interstate or intrastate tariff were applicable between the communities involved which are less than 16 miles apart. The company has made no formal request for any change in these special rates and the Commission is aware of no reason why they should be altered. The suggestion made by the company at the hearing and in its answer to the complaint that, if the Commission should order the reduction of the basic intrastate toll rates to the level of the interstate schedule of rates for distances in excess of 16 miles, these special rates should be increased, is entirely unsupported and without foundation.

[5] In its answer and at the hearing the company contended that a reduction in the intrastate rates to the level of the interstate rates would confiscate its *toll property in Utah*. The

[7] Michigan Bell Teleph. Co. v. Public Service Commission, *supra*, note 5; Bell Teleph. Co. v. Public Utility Commission, *supra*, note 5.

company denied that it made any contention that such a reduction would result in confiscation of its property in the state of Utah *based upon its entire intrastate operations*. The Commission must assume, therefore, that the company's operations in the state of Utah, after a reduction of the intrastate toll rates to remove the unjust and unreasonable discriminations, will not be on a confiscatory basis. The company's contention is that it is entitled to earn a reasonable return from intrastate toll operations on its property in Utah devoted to the rendition of such operations, and that before this Commission can order a reduction of the intrastate rates to eliminate the discriminations complained of, it must investigate and determine the reasonableness of the return on toll property in the state of Utah alone. In order that this might be done, the company takes the position that final disposition of the case should be postponed for at least a year to permit it to prepare a study separating and segregating intrastate toll property, expenses, and revenues from all other property, expenses, and revenues. Such a study, the company estimates, would cost approximately $100,000.

The company offered nothing to indicate that in past years intrastate toll rates have been separately considered from exchange rates or that they have been constructed and established on a basis which would bring a fair return on the purely Utah toll property. It makes no separation on its books of its toll and exchange property in the state, nor does it make any accurate separation of intrastate toll costs and revenues from exchange costs and revenues. The Commission is of the opinion that there is no constitutional or other requirement that the company shall be permitted to earn a reasonable return on its Utah investment in intrastate toll property considered separately and apart from all other property of the company in the state. It is apparent that a reduction in the intrastate toll rates to remove the discriminations will not place an undue burden upon any other class of user in the state since under the company's own computations the intrastate toll rates, after being reduced, will still produce revenues far in excess of the cost which would be avoided if intrastate toll service were not furnished.

[6, 7] In view of the fact that the company does not contend there will be confiscation of its property on the basis of its entire Utah operations, and the further fact there has been no proof that reduction of the intrastate toll rates to the level of the interstate toll rates would result in any unreasonable or unjust discrimination in any class of intrastate service, the Commission is of the opinion there is no good reason for embarking upon such a time-consuming and expensive investigation before ordering the elimination of clearly unjust and unreasonable discriminations in rates. The company's intrastate toll operations are inextricably intermingled with its exchange operations. Such a complicated and involved separation and segregation study would unduly hamper the Commission in its plain duty under the statute to remove the unjust and unreasonably discriminatory features of the intrastate toll rates. We do not think it necessary or advisable, in determing whether the discriminations should be ordered removed, to

first undertake to separate and segregate intrastate toll property, expenses and revenues. Clearly the discriminations should be eliminated by reducing the intrastate rates to the level of the interstate rates.

[8] In its brief the company urges that the discrimination statute is inapplicable in the absence of any showing of damage or prejudice. The record establishes that traffic actually moves under both the interstate and intrastate toll schedule of the company. It necessarily follows that there has been prejudicial treatment of users of intrastate toll service who have been forced by the company to pay a higher rate for that service than has been paid by the users of interstate service, which latter service is rendered under substantially the same conditions and with the same facilities.

The Commission has not felt it necessary to discuss or comment upon all of the evidence, which has been considered carefully along with the exceptions, oral arguments, and arguments as set forth in the briefs filed with the Commission. Upon final review the Commission finds and determines that the company renders intrastate telephone toll service in Utah under conditions that are substantially the same as those under which it renders interstate toll service to Utah subscribers which it handles jointly with the American Company; that there is no significant difference between the type, quality, or value to the subscribers in the state of the two services; that the company's facilities are used commonly and indiscriminately in connection with the two services; and that the differences between the Utah intrastate toll rates and the interstate toll rates charged and collected from Utah subscribers including the differences resulting from the collection of report charges on uncompleted intrastate toll calls when no such report charges are collected on uncompleted interstate calls are unreasonable, unjust, and unwarranted, and that the company by charging and collecting such higher toll rates for intrastate toll service than it charges and collects for comparable interstate toll service and by collecting report charges on uncompleted intrastate toll calls, is giving preferential service to the users of interstate toll and subjecting the users of intrastate toll to prejudicial and disadvantageous treatment.

It is therefore *ordered:*

That effective 12:01 A. M., October 18, 1942, the Mountain States Telephone and Telegraph Company reduce such of its Utah intrastate message toll telephone rates for all rate-mile distances over 16 miles as exceed the rates charged and collected by it for corresponding interstate toll service, rendered jointly by it and the American Telephone and Telegraph Company from and to points within the state of Utah, to the level of such interstate rates.

That the Mountain States Telephone and Telegraph Company discontinue the making and collection of report charges on uncompleted intrastate message toll telephone calls.

That the Mountain States Telephone and Telegraph Company on or before the 10th day of October, 1942, prepare and file with this Commission its telephone tariff modifications to comply with this order.

That the Commission hereby specifically reserves unto itself jurisdic-

tion of this matter and the right to make such other or further order or orders herein as may be deemed necessary and advisable.

NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION, PUBLIC SERVICE COMMISSION

Re Rochester Gas & Electric Corporation

[Case No. 10849.]

Corporations, § 18 — Voting power — Withdrawal from preferred stock — Tax saving — Consolidated returns.

A reclassification of preferred stock, consented to by a large majority of preferred stockholders affected, for the purpose of withdrawing voting rights on such stock, should be approved when this will permit the company to participate in a consolidated income tax return with its parent and affiliated companies, with the result that the company will save a large amount which would otherwise be payable for excess profits taxes.

[July 9, 1942.]

APPLICATION *pursuant to Stock Corporation Law for approval of a reclassification of capital stock; granted.*

APPEARANCES: Goodwin, Nixon, Hargrave, Middleton and Devans (by Frank E. Devans, of Counsel), Rochester, for the Rochester Gas and Electric Corporation.

BURRITT, Commissioner: This is an application made pursuant to § 38 of the Stock Corporation Law for the approval and endorsement by this Commission of a certificate of reclassification of its series C 6 per cent preferred stock, of which 27,000 shares are outstanding. The stockholders of this class of stock now have the right to vote for the election of directors of the corporation. It is proposed that this voting right be withdrawn, except in case of default in the payment of dividends, and that Series C preferred stock be given the same rank as Series D and E preferred stock outstanding in respect to voting rights. A hearing on this application was held at Rochester on June 26, 1942.

The purpose of this reclassification is to permit the company to participate in a consolidated income tax return with its parent and affiliated companies in the Associated System, so that it may effect a substantial saving in Federal income taxes estimated at $440,000.

The directors of the company have been advised and believe that due to the high invested capital base of the Associated Gas and Electric Company, one of the several affiliated corporations, and to the substantial interest charges of that and other corporations in the affiliated group, the corporation would be relieved of the payment of all, or substantially all, of probable excess profits taxes for 1942, if it can

qualify itself to join with the affiliated group in the filing of a consolidated tax return.

Before the corporation can become eligible to participate in such a consolidated return, a reclassification of Series C preferred stock is necessary in order to comply with § 730 of the Internal Revenue Code. Under this Code an affiliated group is defined as one or more chains of corporations connected through voting stock ownership with the common parent corporation, providing (1) at least 95 per cent of each class of stock of each of the corporations except the common parent corporation, is owned directly by one or more of the other corporations; and (2) the common parent corporation owns directly at least 95 per cent of each class of stock of at least one of the other corporations. The term "stock" has been interpreted by Federal courts to mean stock having a right to vote for directors.

Neither Series D nor Series E has the right to vote for directors except in the case of default of dividends. Common stock and Series C preferred stock are authorized to vote for directors. NYPANJ Utilities Company is the beneficial owner of all of the 775,914 shares of common stock of the Rochester Gas and Electric Corporation. This stock has 77,591 votes, or 73.5 per cent of all authorized votes. NYPANJ is also the beneficial owner, through Day and Company, of 9,067 shares of Series C preferred stock, or approximately one-third, bringing its voting control to 86,658 out of 104,591 votes, or approximately 83 per cent.

Capital Structure

Under its certificate of incorporation as proposed to be amended in Case 10,848, currently reported upon, the Rochester company will be authorized to issue 825,000 shares of stock without par value as common stock, and 460,000 shares of a par value of $100 per share as preferred stock. Of this total authorization the following shares have been issued, as indicated:

Common	No par	775,914 shares	77,591 votes
Series C 6%	$100 par voting stock	27,000 "	27,000 "
*Series D 6%	$100 par	171,871 "	
*Series E 5%	$100 par	40,000 "	

* Nonvoting except on default of preferred dividends after 6 months.

The holders of the common shares, without par value, have voting rights on the basis of one vote for each ten shares held by them. The holders of the preferred stock of Series C are entitled to one vote for each share of stock held. Series D and E stock have no rights to vote for directors. All three series of preferred stock outstanding, namely, Series C, D, and E, are entitled to vote for directors and when any dividends on these preferred stocks are and remain in default for a period of six months. At the end of this period all three series of preferred stocks have full voting rights until all such dividends in default are paid in full. The change in voting rights of Series C stock herein proposed does not affect Series C preferred stock rights in respect to default of dividends.

It will be seen from the above that while the common stock has majority voting control of the company by a

considerable margin, that in order to obtain 95 per cent control it would either have to acquire additional shares of the Series C preferred stock or the voting rights of this stock must be abrogated.

Authorization by Stockholders

In order to give effect to this proposal the consent of all stockholders is required, including (1) an affirmative vote of the holders of two-thirds of the Series C preferred stock, and (2) an affirmative vote of the holders of two-thirds of all outstanding shares of stock of the corporation, including D and E preferred stocks, although these are not directly affected by the proposal. For the purpose of securing the required action a special meeting of stockholders was called and held at Rochester on June 18, 1942. At this meeting the following resolution was proposed:

"*Resolved:* That the voting rights of the Series C preferred stock be so changed that the voting rights of all three outstanding series of preferred stock, to wit, Series C, Series D, and Series E 5 per cent, shall be the same; further

"*Resolved:* That a certificate, in form prepared by counsel for the corporation, giving effect to such change in the voting rights of the Series C preferred stock, be executed by the proper officers of the corporation, and, subject to the issuance, by the New York State Public Service Commission (State Division—Department of Public Service), of an order acceptable to the board of directors of the corporation authorizing the endorsement on said certificate of the consent and approval of said Commission pursuant to law, that said certificate be filed in the office of the secretary of state of the state of New York."

This resolution was adopted by the following vote:

	Shares Outstanding		Votes received For	%	Against (Votes)
Preferred	C	27,000	22,990	85	23
Preferred	D	171,871	136,169	79	25
Preferred	E	40,000	29,954	74	5
Common		*77,591	77,591	100	..
		316,462	266,704	84	53

* Voting power, one vote for each 10 shares of 775,914 shares outstanding.

Only one-tenth of one per cent of the preferred C shares were voted against the proposal.

Applicant presented a list of holders of 100 shares or over, of C preferred stock, as of June 24, 1942. This shows the largest single holder of this series to be Day & Company, nominees, who hold 9,217 shares of which NYPANJ is said to be the beneficial holder of 9,067 shares, and New Jersey Power and Light Company of 150 shares. The next largest holder is the New York Life Insurance Company, with 950 shares. The Travelers Insurance Company and the Sea Insurance Company are holders of 150 and 126 shares respectively. Various other companies, institutions, and local individuals hold from 100 to 200 shares. Twenty-three shareholders own 12,629 shares. The balance of the 14,371 shares outstanding are held by 1,291 shareholders, or an average of

11.13 shares each, making a total of 1,314 stockholders for a total of 27,000 shares of Series C preferred stock.

Seven persons attended the special meeting of stockholders on June 24, 1942, of whom four voted a total of 96 votes. The balance of the shares were voted by proxy. Two shareholders (one by proxy) representing 53 shares, voted against the proposal. 84.23 per cent of the outstanding stock was voted at the special meeting.

Consolidated Return Agreement of the Associated System

William A. Lyons, comptroller of the NYPANJ Utilities Company, appeared as a witness and testified regarding an "Agreement for Apportionment of Liability under the Consolidated Excess Profits Tax Returns among the Trustees of Associated Gas and Electric Corporation and Eighty Affiliated Companies." This is an agreement executed between Associated Gas and Electric Company, debtor, in proceedings for reorganization of a corporation under Chap. 10 of the Bankruptcy Act, pending in the United States district court for the southern district of New York (hereinafter referred to as AGECO), and eighty-one companies, including the Associated Gas and Electric Corporation, debtor, in proceedings for reorganization of a corporation under Chap. 10 of the Bankruptcy Act, also pending in the said court (hereinafter referred to as AGECORP) constituting "an affiliated group of corporations," under § 930(d) of the Internal Revenue Code as amended.

The agreement presented as an exhibit is a copy of the one signed by both corporations for 1940 tax return executed August 25, 1941, by Willard J. Thorpe, of the trustees of AGECORP. Mr. Lyons testified that he was authorized by the trustees of AGECORP to state that if the Rochester company can qualify itself, under § 730, it will be asked to join the consolidated group. An identical agreement will then be executed for 1942 and delivered to the Rochester Corporation.

F. H. Patterson, secretary of the Rochester Gas and Electric Corporation, appearing as a witness, testified that if this was done, and if the Commission authorizes the reclassification of Series C preferred stock as petitioned for herein, the Rochester Gas and Electric Corporation will execute and file with the United States Treasury Department, Form 1122E—"Return of information and authorization and consent of subsidiary corporation included in the consolidated excess profits."

The agreement provides, in Par. 1, that any tax due on the consolidated excess profits tax return for the group shall be paid in the first instance by AGECORP trustees. Each company which would have been subject to tax if separate returns had been filed for that year, agrees in Par. 2(a) to reimburse promptly the AGECORP trustees for "such proportion of the total consolidated tax liability of the affiliated group as the ratio of its liability on a separate return basis bears to the aggregate liabilities of all members of the group on a separate return basis."

It is further agreed (Par. 2(b)) that "in no event shall the amount which any member of the group is required to pay to the AGECORP trus-

tees hereinunder exceed the amount of its tax computed on a separate return basis." It is also provided that any dispute shall be decided by an arbitrator selected by the American Arbitration Association, or under the provisions of the Bankruptcy Act, and that the determination of the arbiter so selected shall be conclusive.

The Rochester Corporation will have no liability beyond that above indicated, according to witness Lyons, nor will NYPANJ Utilities Company have anything to gain except to the extent that the equity in its investment may be increased. Neither will other companies obtain any advantages, since it is indicated that on a separate return basis Rochester would have to pay an excess profits tax. Witness Lyons testified that Rochester's participation will have the effect of diluting the margin of coverage for all the other companies.

This agreement will avoid the notorious situation which existed from 1927 to 1933 between this company and its parent company in regard to the consolidated return. In those years the Rochester Gas and Electric Corporation paid the accounting company the amount of income taxes which it would have paid on an individual basis and the accounting company pocketed the difference between these amounts and the amounts equitably payable by Rochester as its share under a consolidated return, as a profit to itself. It was said that the trustees had this situation in mind when they formulated the present agreement.

Participating Companies and Probable Returns

Exhibit 1 is a list of 75 companies in the Associated Gas and Electric Companies' affiliated group which participated in the excess profits tax return in 1941. It includes, among others, AGECO and AGECORP, Debtors; the NYPANJ Utilities Company; the New York State Electric & Gas Corporation; Patchogue Electric Light Company; and the Staten Island Edison Corporation.

The witness Lyons testified regarding the effect of the consolidated return on excess profits taxes in 1940 and 1941. He stated that the 1940 consolidated excess profits tax returns indicated total invested capital of $640,000,000 which, after allowable deductions, resulted in net invested capital for the purpose of computing excess profits credit of $444,000,000. The excess profits tax credit in 1940 was approximately $35,000,000; in 1941 it was $31,000,000; and in 1942, based on pending legislation, it is estimated at approximately $24,000,000. Since Rochester's estimated excess profits income, as shown by Schedule A, is approximately $819,000, this amount would not bring the consolidated return up to a figure which would result in any liability of the group for excess profits tax. In addition, Rochester's net invested capital would be added to the group. Thus, in the opinion of the witness, it is a "substantial certainty" that participating in the consolidated return will result in a "complete saving of excess profits" to it.

Tax Forecasts for 1942

Secretary Patterson of the Rochester company, verified Schedule A attached to the petition. This schedule presents comparative computations showing the estimated potential sav-

ings by the Rochester company under the proposals for the 1942 Revenue Act, adopted by the House Ways and Means Committee, providing the company participates in the consolidated excess profits tax return with the affiliated group over the total required for normal surtax and excess profits tax on a separate return basis. While the final terms of the 1942 Revenue Act have not yet been decided upon, the company believes that the proposals of the House Ways and Means Committee, or something substantially the same, will probably be adopted. If this proves to be the case the rate of the company's income tax accruals for the year will produce about $400,000 less than necessary to provide sufficient accruals to meet the tax to be levied. A summary of the computations in Schedule A, follows:

SCHEDULE A

Comparative computations showing estimated potential savings to Rochester Gas and Electric Corporation, under the proposals for the 1942 Revenue Act adopted by the Ways and Means Committee of the House, if it participates in a consolidated excess profits tax return with the affiliated group.

I. *Forecast of Federal Taxes in Case Company Files Separate Excess Profits Tax Return*			
Invested capital		$58,138,436	
(As computed in accordance with Internal Revenue Laws—for detail see Exh. 7, instant case)			
Calculation of excess profits credit:			
$5,000,000 @ 8%	$400,000		
5,000,000 @ 7%	350,000		
48,138,436 @ 6%	2,888,306	$3,638,306	
Carry-over credit from 1940 and 1941		381,339	
Specific exemption		10,000	
Excess profits credit		$4,029,645	
Normal tax net income adjusted for recoveries from bad debts	$4,182,246		
50% of interest on borrowed capital (principally bond interest)	666,600		
Excess profits net income		$4,848,846	
Adjusted excess profits net income ($4,848,846—$4,029,645)		$819,201	
Excess profits tax @ 94%			$770,049
Normal and surtax net income	$4,187,246		
Less adjusted excess profits net income	819,201		
Balance subject to normal and surtax		$3,368,045	
Computation of normal tax after deducting adjusted excess profits net income:			
Normal tax $3,368,045 @ 24%		$808,331	
Surtax $25,000 @ 10%		2,500	
$3,343,045 @ 16%		534,887	
Total Normal and Surtax			$1,345,718
Grand total of normal, surtax, and excess profits tax on separate return basis			$2,115,767
II. *Forecast of Federal Taxes in Case Company joins in Consolidated Excess Profits Tax Return of Affiliated Group*			
Normal and surtax net income of $4,187,246 @ 40%, if no liability for excess profits tax			$1,674,898
Estimated tax saving			$440,869

The witness also testified that the company has made a forecast of probable revenues and expenses, and taxes, for 1942, according to the best information available just prior to the date of the hearing. This forecast indicates that approximately $889,000 would be available for dividends on common stock and contributions to surplus. As of May 31, 1942, this forecast was $810,000. The witness stated that further increases in operating expenses were indicated since the forecast was made up. This includes an increase of 40 cents per ton in coal, which has been announced. According to this testimony it appears that less than $889,000 will probably be available for dividends and surplus. Dividends appropriations for common stock in 1941 were $620,731.20.

An income statement for the twelve months ended May 31, 1942, and a balance sheet as of the same date, were submitted and received as Exhibit 6. A copy is attached hereto.

Summary and Conclusion

According to calculations of the witness for the Rochester company, it appears that under tax proposals now pending in Congress, and which seem probable of adoption, the Rochester company will have to pay excess profits taxes of about $770,000, bringing the grand total of normal tax, surtax, and excess profits tax payable to a total of $2,115,767, or about $400,000 more than the company is accruing in 1942 for this purpose. It further appears that by joining with other companies of the Associated System in a consolidated tax return, approximately $440,000 saving in taxes can be made.

The company's regular budget forecast for 1942 indicated that after the payment of all operating expenses and taxes that the company would have available about $889,000 for contributions to surplus and for the payment of common stock dividends, with indications that subsequent to the calculations that this amount may be decreased by rising costs of operation.

While the benefits from this tax saving would appear to accrue principally to the stockholders and to the corporation as such, the company's witness Ginna asserted that public interest will be vitally affected since, should the company have to pay this tax, it might be necessary to make application to the Commission to increase rates in order to maintain its financial status. It appears to be in the interest of the public who are the consumers of this company, and of the holders of its securities, that the proposed saving in income tax payments be made.

The voting rights of C preferred stock do not appear to have been of any practical benefit to the holders of that stock since the parent company holds strong voting control through ownership of all common stock. Under present conditions nothing of practical value is being surrendered. That this is so is evidenced by the 85 per cent favorable vote of C stockholders. The necessary consent of all stockholders, both common and preferred, to the required reclassification of its stock, has been given by a very large majority.

In view of these facts, it is recommended that the secretary be authorized and directed to endorse the consent and approval of the Commission

on the certificate of reclassification of stock of the Rochester Gas and Electric Corporation, pursuant to § 38 of the Stock Corporation Law.

UNITED STATES CIRCUIT COURT OF APPEALS, THIRD CIRCUIT

Public Service Corporation of New Jersey

v.

Securities and Exchange Commission

[No. 7879.]

(129 F(2d) 899.)

Intercorporate relations, § 14.1 — Controlling influence — Subsidiary status.

1. Findings that a public utility company was subject to controlling influence by two holding companies (owning 28.4 per cent and 13.9 per cent, respectively, of outstanding voting securities) were supported by substantial evidence, when it was shown that detailed monthly reports were sent to one of the companies (a practice not followed with other stockholders); that this company offered suggestions and criticisms from time to time; that the holding companies could defeat any resolution or action recommended by the management of the subsidiary, could pass their own resolutions as to any matter which did not require a special vote, could "break quorum" at any stockholders' meeting, and could veto any corporate action which required a two-thirds vote; and that there had been a close historic relationship between the companies, p. 352.

Evidence, § 11 — Burden of proof — "Demonstrated" — "Absolute certainty."

2. Use by the Commission of the word "demonstrated" when referring to the burden which the Holding Company Act places upon an applicant for a declaration that it is not a holding company pursuant to § 2(a)(8) of the act, 15 USCA § 79b(a)(8), is not a basis for concluding that the word was intended to connote "absolute certainty," p. 354.

Intercorporate relations, § 19.11 — Evidence as to subsidiary's status — Control — Burden of proof.

3. The burden of proof imposed by the Holding Company Act upon an applicant for an order declaring that it is not a subsidiary of a specified holding company pursuant to § 2(a)(8) of the act, 15 USCA § 79b(a)(8), is to establish by a preponderance of the evidence that it is not controlled or subject to a controlling influence by the holding company, p. 354.

Intercorporate relations, § 19.21 — Subsidiary status — Controlling influence.

4. The phrase "controlling influence" as used in § 2(a)(8) of the Holding Company Act, 15 USCA § 79b(a)(8), (defining a subsidiary company), is not restricted to an influence presently exercised, but control and controlling influence as used in the statute include the power to control and the power to exert a controlling influence as well as the actual exercise of such power, p. 355.

Intercorporate relations, § 14.1 — Subsidiary status — Controlling influence.

5. The phrase "controlling influence" as used in § 2(a)(8) of the Holding Company Act, 15 USCA § 79b(a)(8), (defining a subsidiary company), does not necessarily mean that those exercising controlling influence must be able to carry their point, since a controlling influence may be effective without accomplishing its purpose fully, and a controlling influence may exist although in a latent form, p. 355.

Constitutional law, § 15 — Due process — Form of procedure.

6. The Fifth Amendment of the Federal Constitution guarantees no particular form of procedure, p. 355.

Intercorporate relations, § 19.11 — Determination of subsidiary status — Intermediate report.

7. Refusal of the Commission to direct the trial examiner to make an intermediate report and findings of fact in a proceeding to determine the subsidiary status of a company pursuant to § 2(a)(8) of the Holding Company Act, 15 USCA § 79b(a)(8), does not deprive the company of due process, provided it is notified of the issues and contentions of the parties in some reasonable manner, p. 355.

Procedure, § 30 — Findings.

8. Findings of the Securities and Exchange Commission need not be stated in formal style as it is sufficient if it makes findings which clearly and definitely state the basic facts upon which its ultimate conclusions and decision rest, p. 357.

[August 12, 1942.]

PETITION *to set aside order of Securities and Exchange Commission denying a declaration that an applicant is not a subsidiary company of a specified holding company pursuant to § 2(a)(8) of the Holding Company Act, 15 USCA § 79b(a)(8); order affirmed.*

APPEARANCES: Wendell J. Wright and William H. Speer, both of Newark, N. J. (George W. Grimm, Jr., of Newark, N. J., on the brief), for petitioner; John F. Davis, of Philadelphia, Pa. (Chester T. Lane, General Counsel, Homer Kripke, Special Counsel, and Maurice C. Kaplan, all of Philadelphia, Pa., on the brief), for respondent.

Before Biggs, Maris, and Jones, Circuit Judges.

MARIS, C. J.: The Public Utility Holding Company Act of 1935, 15 USCA § 79 et seq., provides for the imposition of duties and liabilities upon holding companies and subsidiaries of holding companies. Section 2(a)(8) of the act, 15 USCA § 79b(a)(8), defines "subsidiary company" and authorizes a company to file with the Securities and Exchange Commission an application for an order declaring that it is not a subsidiary company of a specified holding company.[1]

[1] "(8) 'Subsidiary company' of a specified holding company means—

"(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, c held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by

Pursuant to this statutory authority, Public Service Corporation of New Jersey applied to the Commission for an order declaring that it is not a subsidiary of The United Gas Improvement Company (hereinafter referred to as UGI) or of The United Corporation (hereinafter referred to as United). The Commission denied the application. Public Service has petitioned this court to set aside the order of the Commission. In support of its petition Public Service urges that the findings of the Commission were not supported by substantial evidence, that the Commission misconstrued the act in reaching its conclusions, and that the proceedings were so conducted by the Commission as to deny to Public Service due process of law in violation of the Fifth Amendment.

[1] We have examined the record in the light of Public Service's argument that the Commission's fact findings are not supported by substantial evidence and we find no merit in Public Service's contentions in this regard. Indeed some of the contentions are so wholly lacking in merit as to border on the frivolous. It is sufficient to say that the evidence fully supports the findings of the Commission which we summarize as follows:

Public Service was organized in 1903 under the laws of the state of New Jersey. Plans for its organization were submitted to the Board of Directors of UGI and approved by it. UGI transferred its interest in an electric company and leases in several operating gas companies to Public Service and received in return interest bearing certificates of Public Service. UGI subscribed to 25 per cent of the original stock issue of Public Service and underwrote part of the total stock issue of $10,000,000 par value. Under a contract for five years UGI supplied Public Service with engineering, purchasing, and advisory service. UGI men served on the board of Public Service, on its finance, salary, works, and budget committees and on the boards of several Public Service subsidiaries. United has had representation on the board of Public Service since 1930.

From 1927 to 1930 UGI directors and executives took an active and perhaps leading rôle in attempting to pro-

virtue of this clause or clause (B), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and

"(B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or i irectly, by such holding company (either lone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title [chapter] upon subsidiary companies of holding companies.

"The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policie. of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title [chapter] upon subsidiary companies of holding companies. . . . "

cure a contract for Public Service with the Pennsylvania Railroad to supply electricity to its newly electrified lines, even though a UGI subsidiary, Philadelphia Electric Company, was a logical competitor for the business. Not until it became apparent that Public Service could not get the contract and that an independent utility might, did Philadelphia Electric enter the field. The resultant contract between Pennsylvania Railroad and Philadelphia Electric made some provision for Public Service. Throughout the negotiations for the contract both UGI and United officials advised the president of Public Service as to the procedure he was to follow.

In 1928 Public Service and UGI pooled their interests in corporations devoted to construction work and organized United Engineers and Constructors, Inc. Although Public Service owned one-half of its stock United Engineers was managed by UGI almost exclusively. After United Engineers proved to be a financial failure all of its problems were still dealt with by UGI until 1938, when Public Service and UGI simultaneously rid themselves of their stock ownership.

UGI participated in financing Public Service and in acquiring utility properties for Public Service. United and UGI helped to reorganize Public Service transportation subsidiaries. UGI negotiated with Columbia Gas and Electric Corporation, a subsidiary of United, to induce Columbia Gas to refrain from supplying natural gas in territory supplied by Public Service.

Following the passage of the Public Utility Holding Company Act in 1935 and the decision by the Supreme Court in Electric Bond & Share Co. v. Securities and Exchange Commission (1938) 303 US 419, 82 L ed 936, 22 PUR(NS) 465, 58 S Ct 678, 115 ALR 105, in 1938 UGI and United representatives resigned from the board of Public Service so that at the time of the Commission's present order there were no individuals serving as officers or directors of Public Service who were serving in similar capacities for UGI or United. However, Public Service and UGI continued until 1939 to utilize joint purchasing agencies. Public Service still continues to send UGI detailed monthly reports, a practice which it does not follow with other stockholders, and UGI offers suggestions and criticisms from time to time.

United and UGI are registered holding companies. UGI is a subsidiary of United. UGI owns 28.4 per cent and United 13.9 per cent of all outstanding voting securities of Public Service, a total of 42.3 per cent. From 1929 through 1940 United and UGI cast a majority of the total number of votes which were cast at each annual meeting of Public Service stockholders. At the 1941 annual meeting when United refrained from voting, UGI stock accounted for 49.2 per cent of the total stock voted. Except for the stock held by United and UGI the securities of Public Service are widely scattered. The combined holdings of the next thirty largest stockholders aggregate but 8.85 per cent of the outstanding stock of Public Service. In 1936, despite an extraordinary effort made by Public Service to procure proxies, only 79.1 per cent of the outstanding stock was voted and of this the holdings of UGI and United represented 53.5 per cent.

From the foregoing facts as to stock ownership the Commission concluded that as a practical matter if United and UGI so willed they could defeat any resolution or action recommended by Public Service management, could pass their own resolutions as to any matter which did not require a special vote, could "break quorum" at any stockholders' meeting, and could veto any corporate action which required a two-thirds vote of each class of stockholder, such as merger or consolidation. In the light of the close relationship between United, UGI, and Public Service disclosed by the history of Public Service the Commission concluded that the continuing corporate intimacy was especially significant on the issue of controlling influence.

The Commission accordingly reached the conclusion that Public Service had not sustained the burden of proving that it was not controlled by UGI and United, or subject to their controlling influence.

In support of its contention that the Commission misconstrued and misapplied § 2(a)(8) of the act Public Service alleges that the Commission treated the prima facie status of subsidiary, created by the act whenever 10 per cent of the outstanding voting securities are owned by a holding company, as evidence of a fact to be overcome by proof sufficient to satisfy the Commission beyond any possible doubt that there was an absence of present or possible future "control" of or a "controlling influence" over Public Service by UGI and United; that the Commission imposed upon Public Service the burden of demonstrating to the satisfaction of the Commission that it is not now controlled, or subject to a controlling influence by UGI and United and that there is no possibility of any such control or controlling influence in the future; that the Commission construed "controlling influence" as any influence; that the Commission construed the act as giving it absolute discretion to determine what constitutes "control" and "controlling influence" and to determine whether or not it is necessary or appropriate in the public interest or for the protection of investors or consumers that Public Service be subject to the obligations, duties, and liabilities imposed by the act upon subsidiary companies of holding companies; and that the Commission failed to give effect to the direction in the act that when it is shown that a controlling influence does not presently exist the application for an order declaring the applicant not to be a subsidiary must be granted.

[2, 3] Most of these contentions are wholly beside the point for the reason that they are without factual basis in the record. Thus, upon examination of the Commission's fact findings and opinion we discover that in arriving at its conclusion the Commission did not rest its decision upon any presumption arising from the ownership of 10 per cent of voting stock of a utility company by a holding company but relied entirely upon evidence presented at the hearing before its trial examiner as to the effect of the stock ownership upon the relations of the three corporations. Again, although the Commission used the word "demonstrated" when referring to the burden which the act places upon the applicant, there is no basis for concluding that the word was intended to con-

note "absolute certainty" as Public Service would have us find. Indeed, the only conclusion which can fairly be drawn from the Commission's opinion as a whole is that it proceeded upon the theory that the burden of proof which is imposed by the act upon an applicant is to establish by a preponderance of the evidence that it is not controlled or subject to a controlling influence by a holding company. Such a conception of the burden of proof is entirely correct in the light of the express provisions of the act, of ordinary rules of statutory construction and of generally accepted rules of evidence. Nor is there any merit in the assertion that the Commission construed the words "controlling influence" as any influence. The force of the adjective "controlling" was expressly acknowledged by the Commission.

[4, 5] Public Service strongly urges that the phrase "controlling influence," as used in the act, means an influence presently exercised and that the Commission erred when it said that "'control' and 'controlling influence' as they are used in § 2(a)(8), include the power to control and the power to exert a controlling influence, as well as the actual exercise of such power." We think the words were correctly construed by the Commission. The words "controlling influence" were similarly construed by the circuit court of appeals for the sixth circuit in Detroit Edison Co. v. Securities and Exchange Commission (1941) 119 F (2d) 730, 39 PUR(NS) 193, certiorari denied in (1941) 314 US 618, 86 L ed 497, 62 S Ct 105. The court there said (119 F(2d) at pp. 738, 739, 39 PUR(NS) at p. 205) "the present act undertakes to bring within its ambit all subsidiaries subject to 'controlling influence' of a parent. This phrase should be construed in the light of the purpose of the act of which it is a part, and when understood in this setting and in the light of its ordinary signification, it means the act or process, or power of producing an effect which may be without apparent force or direct authority and is effective in checking or directing action, or exercising restraint or preventing free action. The phrase, as here used, does not necessarily mean that those exercising controlling influence must be able to carry their point. A controlling influence may be effective without accomplishing its purpose fully." A "controlling influence" may exist, although in a latent form. Detroit Edison Co. v. Securities and Exchange Commission, *supra*. Even though, after 1938, UGI and United did not utilize their voting strength to elect directors, pass resolutions, or veto corporate changes the latent power to do so was a present power to exert a "controlling influence" upon Public Service at any time.

We therefore find no error in the construction or application of § 2(a)(8) of the act by the Commission.

[6, 7] Public Service claims that it was deprived of due process of law as guaranteed by the Fifth Amendment because the Commission refused to direct the trial examiner to make a report and findings of fact, because the Commission did not make findings of basic facts and because of alleged errors which permeated the entire proceedings.

We shall deal first with the effect of the denial of an intermediate report

and fact findings. When the Commission refused this request it directed counsel for the Commission to file requests for specific fact findings on June 15, 1941, and a brief in support of the requests on July 1, 1941, to be followed by requests for specific fact findings and brief in support thereof by counsel for Public Service on July 15, 1941, and a reply brief by counsel for the Commission on July 25, 1941. Oral argument was then to be had before the Commission on July 30, 1941. This procedure was in fact followed.

The Fifth Amendment guarantees no particular form of procedure. That the denial of an intermediate report does not deprive the applicant of due process provided it is notified of the issues and contentions of the parties in some reasonable manner was decided by the Supreme Court in National Labor Relations Board v. Mackay Radio & Teleg. Co. (1938) 304 US 333, 350, 82 L ed 1381, 58 S Ct 904. In that case Justice Roberts said: "At the conclusion of the testimony, and prior to oral argument before the examiner, the Board transferred the proceeding to Washington to be further heard before the Board. It denied respondent's motion to resubmit the cause to the trial examiner with directions to prepare and file an intermediate report. In the circuit court of appeals the respondent assigned error to this ruling. It appears that oral argument was had and a brief was filed with the Board after which it made its findings of fact and conclusions of law. The respondent now asserts that the failure of the Board to follow its usual practice of the submission of a tentative report by the trial examiner and a hearing on exceptions to that repo deprived the respondent of opport nity to call to the Board's attention th alleged fatal variance between the a legations of the complaint and th Board's findings. What we have sai sufficiently indicates that the issue and contentions of the parties wer clearly defined and as no other detr ment or disadvantage is claimed t have ensued from the Board's proce dure the matter is not one calling fo a reversal of the order. The Fift Amendment guarantees no particula form of procedure; it protects substan tial rights. Compare Morgan v. Unit ed States (1936) 298 US 468, 478 80 L ed 1288, 56 S Ct 906, 910. Th contention that the respondent was de nied a full and adequate hearing mus be rejected."

That a procedure such as that adopt ed by the Commission in this case i unobjectionable was made clear b Chief Justice Hughes in Morgan v United States (1938) 304 US 1, 21 22, 82 L ed 1129, 23 PUR(NS) 339 345, 58 S Ct 773, 777, in which he said, "The government adverts to an observation in our former opinion that while it was good practice—which we approved—to have the examiner, receiving the evidence in such a case prepare a report as a basis for exceptions and argument, we could not say that that particular type of procedure was essential to the validity of the proceeding. That is true, for, as we said, what the statute requires 'relates to substance and not form.' Conceivably, the Secretary, in a case the narrow limits of which made such a procedure practicable, might himself hear the evidence and the contentions of both parties and make his findings up-

in the spot. Again, the evidence being in, the Secretary might receive the proposed findings of both parties, each being notified of the proposals of the other, hear argument thereon, and make his own findings."

Section 2(a)(8) of the act, 15 USCA § 79b(a)(8), under which Public Service made its application, sets forth in detail the issues which were properly before the Commission, the Commission's notice and order for hearing did the same, the evidence presented by counsel for the Commission, their proposed fact findings, their brief and reply brief in support of those proposed fact findings afforded cumulative and overwhelming proof that Public Service was well informed of the issues involved and of all facts and theories relied upon by counsel for the Commission in opposition to the application. We conclude that the denial of the request for a trial examiner's intermediate report and fact findings was not a denial of due process of law.

[8] The contention of Public Service that the Commission did not make findings of fact in proper form or sufficiently indicate its basic findings is without merit. We agree with the circuit court of appeals for the tenth circuit in its statement in Swift & Co. v. National Labor Relations Board (1939) 106 F(2d) 87, 94, that "it is not essential that the Board state its findings in formal style. It is sufficient if it make findings which clearly and definitely state the basic facts upon which its ultimate conclusions and decisions rest."

Finally we turn to Public Service's own summary of the other items upon which it bases its claim of deprivation of due process. The Commission erred, it says, in "placing on the petitioner an undue burden of proof, using false scales to weigh the evidence, disregarding substantial proof, and expressly treating it as negligible; unreasoningly and unreasonably treating unimpeached witnesses as unworthy of belief and classifying them in the same class as tax evaders, and calling their testimony 'wide-eyed disavowals'; using nonexisting evidence as a basis of reaching a conclusion, and other indulgence in like actions." We can but state that our examination of the record does not convince us that any of these charges of improper action on the part of the Commission are justified. The Commission adhered closely to the main issue before it and refused to be drawn into deciding matters not involved in that issue. It examined the evidence to determine whether Public Service had proved by a fair preponderance thereof that UGI and United did not control or exercise a controlling influence over Public Service. It found no such preponderance of evidence and consequently was not able to find as true those facts which were necessary to support Public Service's application. Its denial of the application inevitably followed.

The order of the Commission is affirmed.

FEDERAL POWER COMMISSION

Re Superior Water, Light & Power Company

[Opinion No. 79, Docket No. IT-5765.]

Electricity, § 2 — Jurisdiction of Federal Power Commission — Transmissio and sale of electricity.

1. The Federal Power Commission has jurisdiction over a company en gaged in the interstate transmission and sale at wholesale of electric energy p. 361.

Accounting, § 3 — Jurisdiction of Federal Power Commission — Electric Com pany.

2. The Federal Power Commission has jurisdiction over accounting meth ods of a company engaged in the interstate transmission and sale at whole sale of electric energy, although such company is subject to the provision of the Holding Company Act prohibiting the alteration of the rights o stockholders of a holding company, p. 361.

Accounting, § 3 — Jurisdiction of Federal Power Commission — Electric com pany.

3. The Federal Power Commission has jurisdiction over accounting meth ods of a company engaged in the interstate transmission and sale at whole sale of electric energy as against the contention that such company is sub ject to the accounting requirements of the Securities and Exchange Com mission by virtue of § 15(a) of the Holding Company Act, 15 USCA § 79*o*(a), the company being an operating company deriving its revenu from the operation of its utility assets, p. 361.

Accounting, § 23 — Franchise costs — Absence of evidence.

4. The actual cost of franchises to an electric company must be entered on the company's books at the consideration stated in the grant where there is no evidence in the record to indicate another consideration, p. 365.

Accounting, § 56 — Common stock item — Write-up of plant account.

5. A write-up of plant account of an electric company represented by the value of the stock issued without cash or property being received as con sideration should not be included in the accounts of the company as part of the original cost of the utility plant, p. 365.

Accounting, § 56 — Reaccounting for expenditures — Transfer to surplus account

6. An item which does not represent a valid cost of property has no proper place in the plant account of a public utility company and should be trans ferred from such account to surplus, p. 366.

Accounting, § 56 — Reaccounting for expenditures — Items charged to expense.

7. An electric company which has exercised allowable discretion in charg ing general direct and overhead expenditures to operating expenses is bound by the plant cost resulting therefrom and may not recompute and restate such items in plant account, p. 366.

Accounting, § 29.1 — Organization costs — Unsupported items.

8. An electric company cannot include in its organization account conjectural and unsupported items the major portion of which, such as preliminary surveys and temporary stations, do not represent organization costs, p. 366.

Accounting, § 14 — Property retired — Over-retirement.

9. An electric company may not restore certain over-retirements subsequent to a certain date to its plant account where they are offset by under-retirements prior to that date, p. 368.

Accounting, § 21 — Financing costs — Bond discount.

10. Bond discount must be treated in the same manner as interest, an expense to be finally discharged when the bonds are retired, since it is part of the cost of money and so related to the coupon rate of interest that, only by considering discount together with stated coupon rate of bond interest can the actually effective interest rate be determined, p. 369.

Accounting, § 21 — Financing costs — Capitalization.

11. The cost of borrowed funds used for construction purposes should be capitalized only during the construction period, p. 369.

Accounting, § 21 — Financing costs — Bond discount.

12. Bond discount and expenses should be transferred from an electric company's plant account and charged to earned surplus where the amount of property remaining from the construction period in which the proceeds of the bonds were used is negligible and the company introduced no evidence as to the cost of the property, p. 369.

Accounting, § 56 — Reaccounting for expenditures — Transfer to surplus.

13. Items improperly charged to plant account rather than to maintenance accounts at the time they were incurred should be transferred to an earned surplus account, p. 370.

Accounting, § 14 — Property retired — Over-retirement.

14. An amount representing an over-retirement of transportation equipment of an electric company should be restored to the company's plant account and a credit made to plant adjustment account, such credit then being transferred to reserve for depreciation account, p. 370.

Accounting, § 14 — Property retired — Over-retirement.

15. Unrecorded adjustments and retirements resulting from certain unrecorded retirements, being offset by an over-retirement of certain properties, should be removed from electric plant account and charged to reserve for depreciation account, p. 371.

Accounting, § 19 — Customer contributions.

16. Customer contributions in aid of construction which had been improperly treated as a reduction of the cost of construction of an electric plant rather than as contributions should be restored to plant account and disposed therefrom by transfer to contributions in aid of construction account, p. 371.

[September 1, 1942. Rehearing denied October 20, 1942.]

FEDERAL POWER COMMISSION

ORDER to show cause why Commission should not require electric company to file reclassification of accounts and original cost studies reflecting accounting adjustments as recommended; adjusting entries ordered.

APPEARANCES: Sanborn Blake & Aberg, by Chauncey E. Blake and Glen H. Bell, Crawford & Crawford, by R. A. Crawford, and Reid & Priest, by A. J. Priest and L. Byron Cherry, for Superior Water, Light & Power Company; Richard J. Connor, General Counsel, George Slaff, and Howell Purdue, for the Federal Power Commission.

By the COMMISSION: This proceeding arises under the Federal Power Act and relates to the applicability of the Uniform System of Accounts for Public Utilities and Licensees prescribed by this Commission and to the accounting entries to be entered upon the books of the respondent [1] under certain requirements of such system of accounts.

History of the Case

This Commission, pursuant to the authorization of the Federal Power Act, prescribed a Uniform System of Accounts for Public Utilities and Licensees which became effective on January 1, 1937. Electric Plant Instruction 2-D of the system of accounts requires the reclassification of the electric plant of public utilities and licensees, as of the effective date thereof, and the submission to the Commission by January 1, 1939, of entries necessary to reflect the reclassification.[2]

The company failed to submit reclassification and original cost studies pursuant to these requirements, but did file a reclassification and original cost study of its electric, gas, and water properties with the Wisconsin Public Service Commission. Such study was the subject of a field examination by the staff of that Commission, whose report was served upon the company.

The staff of the Federal Power Commission reviewed the study filed by Superior and the report thereon of the staff of the Wisconsin Commission, and concurred in the recommendations made in said report (with minor exceptions) and recommended that the same be made effective with respect to the company's electric properties.

Subsequently, on January 27, 1942, this Commission issued its order requiring, among other things, that Superior show cause at a public hearing

[1] Respondent will be referred to sometime as "the company" or "Superior."

[2] Electric Plant Instruction 2-D provides as follows:

"Not later than two years after the effective date of this system of accounts, each utility shall have completed the studies necessary for classifying its electric plant as of the effective date of this system of accounts in accordance with the accounts prescribed herein and it shall submit to the Commission the entries it proposes to make to carry out the provisions of this instruction. It shall submit also a comparative balance sheet showing the accounts and amounts appearing in its books as of the effective date of this system of accounts and respective amounts as of the same date after the proposed entries shall have been made."

The Commission entered a supplemental order on May 11, 1937, in which was set forth in considerable detail the information to be submitted in connection with the reclassification studies.

why this Commission should not by order require Superior (a) to file reclassification of accounts and original cost studies reflecting the accounting adjustments recommended in the report served upon said company, and (b) to dispose of the amount of $300,000 classified in Account 107, in accordance with the evidence adduced at the hearing to be held thereon. In this order the Commission provided for a joint hearing with the Wisconsin Commission but the latter subsequently considered separate hearings advisable, and no joint hearing was held.[3]

On February 17, 1942, Superior filed a motion to dismiss the order to show cause, objecting inter alia to a joint hearing being held by this Commission with the Wisconsin Commission. This motion was denied and thereafter the public hearing of the Federal Power Commission was held at Madison, Wisconsin, commencing on March 23rd and concluding on March 26, 1942. At the outset of the hearing, the company refused to offer any witnesses in response to this Commission's order to show cause, but made a proffer of the entire record in the proceeding which had just been concluded before the Wisconsin Commission and which had dealt with the company's gas and water as well as electric properties. Only a small portion of that record had then been transcribed. Commission counsel objected to the incorporation of the Wisconsin record in evidence on the ground that it would add immeasurably to the burden of the record in this case which dealt only with the reclassification of electric plant accounts, would confuse rather than clarify the issues, and would serve no useful purpose whatever. The objection was sustained by the trial examiner.

[3] Formal proceedings before the Wisconsin Commission were held March 9 to March 24, 1942.

Jurisdiction of the Federal Power Commission

[1–3] The evidence clearly establishes that the company owns and operates facilities both for the transmission of electric energy in interstate commerce and for the sale at wholesale of electric energy in interstate commerce, and, therefore, is subject to our jurisdiction.

We cannot subscribe to the contention of the company that § 6(a) of the Public Utility Holding Company Act, 15 USCA § 79f(a), exempts it from the Commission's accounting requirements under § 318 of the Federal Power Act. There is nothing in our requirements as to the method of keeping accounts which works any change in voting power or preferences or other rights of security holders, or which conflicts in any manner with the provisions of § 6(a) of the Public Utility Holding Company Act. We also reject the company's contention that under § 15(a) of the same act, 15 USCA § 79*o*(a), it is subject to the accounting requirements of the Securities and Exchange Commission and is, therefore, exempt from the accounting requirements of this Commission. The Securities and Exchange Commission has deemed it necessary and appropriate to prescribe an accounting system only for holding companies and their subsidiaries which do not derive any revenue or income from their own operation of

utility assets or physical properties.[4] As Superior is an operating company, deriving its revenues from the operation of its utility assets, there is no conflict of jurisdiction in the applicability of the systems of accounts of the two Commissions.

Conduct at the Hearing

We feel that this opinion would not be complete without some mention of the company's obstructive attitude at the hearing in response to our order to show cause. Although two of the three witnesses who testified for the company in the Wisconsin Commission proceeding were present at the instant proceeding, the company refused to present any witnesses for direct examination, except to call these two witnesses and ask if their testimony would be the same in this case as in the Wisconsin Commission case. Respondent offered to produce a third witness for cross-examination, who, if he could be produced for cross-examination, could equally well have been produced for direct examination.

As set forth in our order denying the application to reopen the hearing, the tendering of witnesses for cross-examination was an empty gesture on the part of the company. The evidence in the Wisconsin Commission proceeding which might have been relevant in this proceeding could have been presented by the direct sworn testimony of available witnesses in this proceeding in but a fraction of the time which would have been required to complete the transcription of the Wisconsin record and for counsel to attempt to stipulate, or for the examiner to rule on, the relevant portions thereof. Company counsel's refusal to have their witnesses give testimony *directly and under oath in this proceeding* was in the face of the fact that the testimony of one of its witnesses present at the hearing had already been prepared in question and answer form.

No necessity existed for the introduction here of the entire record in the proceeding before the Wisconsin Commission, and the trial examiner properly rejected the conditional offer by company's counsel. Such an offer certainly came with ill grace from this company which had objected to this Commission holding a joint hearing with the Wisconsin Commission because of alleged inconsistencies between the procedural and evidentiary rules of the two Commissions.

The Issues of the Case

The major issues before us are simple. Briefly, they are as follows:

1. Was the $1,000,000 of common stock issued by the company in 1889, of which $300,000 was ultimately charged to the electric plant accounts, a payment for property or was it a gift by the promoters to themselves?

2. Shall the company be permitted to restate in its plant account the amount of $102,754.73, of which $84,328.10 represents general direct costs and overheads which, if incurred at all, have been charged to expense, and $18,426.63 of which represents a theoretical computation of organization costs?

3. Is the amount of $8,779.81, representing certain over-retirements by

[4] Securities and Exchange Commission General Rules and Regulations under the Public Utility Holding Company Act of 1935, Rule U-26.

the company subsequent to the year 1908, more than offset by under-retirements prior to 1908 which the company failed to credit to its plant account?

These, together with certain other issues, are discussed in the following paragraphs:

To the extent that the amount reclassified in Account 100.1 Electric Plant in Service, includes fees paid by Superior to associated companies pursuant to service contracts, these fees are permitted to remain tentatively in that account subject to such further consideration as may be deemed warranted at any time in the future. We do not, therefore, in this opinion, intend to approve their inclusion in Account 100.1.

Was the Common Stock Issued by the Company in 1889 a Payment for Property or Was It a Gift by the Promoters to Themselves?

Properties acquired from predecessors.

Respondent was incorporated on September 28, 1889, under the laws of the state of Wisconsin for the purpose of rendering water, gas, and electric service to the city of Superior. The organizers were W. R. Merriam, A. H. Wilder, V. M. Watkins, and F. B. Kellogg of St. Paul, Minnesota, and R. C. Elliott and F. A. Ross of Superior, Wisconsin. Upon organization, the entire issue of $1,000,000 par value of the company's capital common stock was divided among Wilder, Watkins, Elliott, and Ross, while Kellogg received ten qualifying shares.

On October 31, 1889, respondent purchased the electric properties of Superior and Duluth Electric Company and the gas properties of Superior Light and Fuel Company. On November 1, 1889, it purchased the water properties of the Superior Water Works Company, and on November 8, 1889, it purchased a pole line of the Superior Arc Light and Power Company. All of these properties were located in the general area of what is now the city of Superior. Prior to the acquisition of these physical properties respondent, on October 18, 1889, had acquired certain rights and easements known as "the DeForest grants."

The Superior and Duluth Electric Company was organized in 1885 to render electric service in Douglas county, Wisconsin. The company began business with an authorized capital stock of $100,000. The Daft Electric Company of New York was granted franchises by the village of Superior, and later the city of Superior, and in 1888 conveyed its franchise rights to Superior and Duluth Electric Company.

On October 25, 1889, Superior and Duluth Electric Company conveyed all of its property, rights, and franchises to R. C. Elliott, one of the organizers of the respondent, in consideration of $72,309.07. The record discloses that this sum represented the cost to the grantor of constructed property, plus interest at 6 per cent from date of construction to November 1, 1889. This property was subsequently conveyed on October 31, 1889, from R. C. Elliott to respondent. Although the consideration named in the latter instrument of transfer was $75,000, respondent actually reimbursed Elliott the original

sum of $72,309.07, which, after deducting net current assets purchased, resulted in respondent recording on its books $71,399.05 as the cost to it of the property acquired from Superior and Duluth Electric Company through Elliott.

Shortly after acquiring these properties, an electric pole line, constructed for the Superior Arc Light and Power Company by Northwestern Electric Construction and Supply Company, a construction contractor, was conveyed to respondent on November 8, 1889, for the sum of $4,500. Respondent does not contend that any other or different consideration was paid for such pole line, which was recorded in its plant account at $4,500. These two purchases, aggregating $75,-899.05, are the amounts recorded by respondent in its electric plant account.

Respondent recorded the purchase of the properties and the issue of the stock in its accounts as follows:

Electric plant	$75,899.05	
Gas plant	94,380.20	
Water plant	210,292.50	
Total plant		$380,571.75
Electric franchise ...	$200,000.00[5]	
Gas franchise	300,000.00	
Water franchise	500,000.00	
Total franchise ..		$1,000,000.00

While the journal entry reporting the issuance of this stock describes these amounts as simply "franchises," they appear on subsequent balance sheets of the company as "franchises, charters, and grants," or "franchises, easements, and rights of way." The $1,000,000 thus recorded as franchises has always been carried by respondent in its intangible accounts.[6]

The DeForest grants.

The evidence shows that the DeForest grant was assigned to respondent by the DeForest brothers, who in 1884 had received the grant from Land and River Improvement Company. This latter company was a New Jersey corporation owning 4,000 acres of land in the town site of West Superior. The grant made in 1884, by Land and River Improvement Company to the DeForests, conferred a sole and exclusive right to the use of streets and alleys in the town site for the purpose of laying mains for water and gas, maintaining conduits for steam or compressed air, and the conveying of electric wires for telephone, telegraph, power, or other purposes in, under, or over the streets and alleys laid out or to be laid out upon the lands of the grantor. The consideration stated in the conveyance was $1 plus 2 per cent of the net profits to accrue from said grant.

On October 14, 1889, Land and River Improvement Company released the DeForests from any and all obligations arising out of the original grant, including the obligation to pay 2 per cent of the net proceeds derived from said grants. The considerations which motivated this release are recited in the instrument:

"Whereas the improvement of the property of the said Land and River Improvement Company resulting from the said privilege so far as the same has been exercised, has been of

[5] Subsequently, the amounts allocated to electric and to gas franchises were reversed, and the amount allegedly attributable to electric plant is carried at $300,000.

[6] In its studies, the company assigned $110,100 to Land and Land Rights purporting to represent the electric portion of the cost of the DeForest grant, and $189,900 to Miscellaneous Intangible Plant.

material advantage to the said Land and River Improvement Company, and the said Robert W. DeForest and Henry V. DeForest are about to assign the said grant with the consent of the said Land and River Improvement Company, to other parties who propose to invest large amounts of money in the extension and development of the water and lighting system in said city of Superior, from which development and extensions great material benefits will result to the Land and River Improvement Company."

Four days after the release above described was executed, the DeForests on October 18, 1889, assigned and transferred to respondent the right to lay mains for water and gas and to construct conduits for conveying electric wires for lighting, heating, and power purposes in, under, or over the streets and alleys laid out or to be laid out on the lands of the Land and River Improvement Company. The DeForests never operated under this grant, hence respondent was the first to devote such grant to utility service.

The relationship of the parties here concerned is significant. F. H. Weeks and George S. Baxter were president and secretary, respectively, of Land and River Improvement Company at the time the release was given to the DeForests. The evidence shows that the DeForests were directors and part stockholders in Land and River Improvement Company. F. H. Weeks, president of the Land and River Improvement Company, was the law partner of DeForest. Both Weeks and Baxter were heavily interested in Superior Water Works Company as majority stockholders and directors, respectively. Weeks was also secretary of the Superior and Duluth Electric Company at the time its properties were conveyed to respondent through Elliott.

Evidence of cost.

[4, 5] The records of respondent and the evidence in this case indicate that none of the common stock issued at organization was issued to the DeForests or to predecessor owners of electric properties. Further, in the consideration paid for the electric, gas, and water properties no amount is included for the DeForest grant. There is not the slightest scintilla of evidence in the record to indicate that the cost of this grant to respondent was more than the $1 mentioned in the instrument of conveyance. It is a reasonable conclusion borne out by the evidence that, as recited in the instrument of release, the benefits that would accrue to Land and River Improvement Company through the availability of water, gas, and electricity in the promotion of the town site were the sole considerations which motivated the transfer of this grant to respondent. We must conclude, therefore, that the actual cost of the DeForest grant to respondent is the consideration of $1 stated in the assignment.

The minutes of the stockholders' meeting of October 31, 1889, make no reference to the DeForest grant, and no reference to these grants can be found in the minutes of any other stockholders' meeting during the period of organization. A journal entry made sometime after organization refers to the grant as among the rights acquired at organization.

The record is clear that this stock

was issued to persons who conveyed no property, tangible or intangible, to respondent. It is undisputed that no cash consideration was received by respondent for this stock. We must conclude, therefore, that the amount of $1,000,000 does not represent cost of property to the respondent and cannot be included, under the provisions of the system of accounts, as a part of the original cost of utility plant. The evidence indisputably shows that no portion of the capital stock of Superior was issued in payment either for the properties of Superior and Duluth Electric Company, the properties of Superior Arc Light and Power Company, the DeForest grants, or for franchises. It is clear that the entire $1,000,000 par value was issued by the promoters to themselves wholly without consideration. Such practices are not new to the experience of this Commission. The question of the issuance of stock by entrepreneurs to themselves as a disguised gift was passed upon by us in Re Northwestern Electric Co. (1940) Opinion No. 56, 36 PUR(NS) 202. We find, therefore, that the amount of $300,000, classified by the company in its electric plant accounts ($110,100 in Land and Land Rights and $189,900 in Miscellaneous Intangible Plant) is a write-up of the plant account, and as such does not constitute a part of the actual cost of the company's electric plant. The amount of $300,000 is, therefore, properly classified in Account 107, Electric Plant Adjustments.

Disposition of the Write-up Classified In Account 107

[6] Having determined that the amount of $300,000 is properly classifiable in Account 107 as a write-up of electric plant, we turn to a consideration of the question of the disposition of that amount as required by the provisions of that account.[7]

Inasmuch as this $300,000 does not represent a valid cost of property, it has no proper place in the plant account of a public utility and must be expunged therefrom. This is true not only under our system of accounts but under all sound principles of accounting. We find, therefore, that the amount of $300,000 should be charged immediately to Account 271, Earned Surplus.

Restatement of Overheads and Theoretical Organization Expense

[7, 8] Although respondent is required by the Uniform System of Accounts to determine the original cost of its electric property by an analysis of its books and records,[8] the company observed that requirement only in so far as bare labor and material costs were concerned. Having determined these base costs, the company thereafter disregarded general direct costs and overheads recorded on its books and substituted in lieu thereof theoretical estimates of such costs, $84,328.10 in excess of recorded general direct costs and overheads. In addition, the company included an estimate of $18,426.63 for organization costs.

[7] The text of Account 107 reads, in part, as follows:

"(b) The amounts included in this account . . . shall be disposed of as the Commission may approve or direct."

[8] Electric Plant Instruction 2-B reads, in part, as follows:

"B. The cost to the utility of its electric plant shall be ascertained by analysis of the utility's records. . . ."

There is no dispute that the amount of general direct costs and general overheads claimed by respondent exceed the amounts capitalized by it as a part of the construction cost of property. To the extent that such costs have actually been incurred, it is clear that they have been charged by respondent either to construction or to operating expenses, with the exception of interest, which is chargeable as an income deduction.

We are, therefore, confronted with the problem of whether or not, in reclassifying its accounts pursuant to our system of accounts, a utility may recompute and restate in plant account amounts representing general direct and overhead costs previously charged to operating expenses. At the outset it should be noted that such reaccounting is specifically forbidden by Electric Plant Instruction 2-B of the system of accounts which reads:

"It is likewise not intended that adjustments shall be made to record in electric plant accounts amounts previously charged to operating expenses in accordance with the uniform system of accounts in effect at the time or in accordance with the discretion of management as exercised under such uniform system of accounts."

Under the system of accounts generally in effect in the past for electric utilities, and also the present system, utility officials have been and are permitted considerable discretion in accounting for certain joint and other costs which cannot clearly be classified as plant costs or operating expenses. This is particularly true as to those items which are subject to proration or allocation, such as salaries of officers, office supplies and expenses, salaries of clerks and stenographers, expenses of storerooms, and expense of purchasing activities. It is a function of the management to decide how these joint costs shall be allocated. Within the limits of reasonableness, broad discretion may be exercised. All utilities have exercised discretion in these matters and the systems of accounts permitted it. It is undisputed that the company exercised its allowable discretion in its past accounting.[9] Reports to regulatory bodies, stockholders, and taxing authorities showing cost of plant, operating expenses, and income reflect the effect of the discretion exercised by respondent in apportioning joint expenses between construction and operation.

The cost of any utility plant is the resultant of the allowable accounting discretion of the utility as exercised within the limits permitted by the system of accounts; and the utility, having exercised such allowable discretion, is thereafter bound by the cost resulting therefrom. It has apportioned these expenses as it deemed appropriate, and in doing so it has complied with sound accounting principles and the requirements of the Uniform System of Accounts. Its officers wish to exercise anew the discretion properly exercised at the time. They wish to exercise their discretion so as to show maximum charges to plant and minimum charges to income long after

[9] The cross-examination of respondent's witness Gallaspy discloses the following colloquy:

Mr. Slaff: Those overheads that were recorded on the company's books, those that were recorded in the past, were recorded on the basis of the discretion of management, is that correct?

Mr. Gallaspy: Yes, sir.

the income statements have served their purpose. The income account is fully as important as the plant account, but under the scheme advocated by the company great doubt would always be cast upon both. To achieve this objective, respondent is willing to impeach its past financial statements although depreciation expense, taxes, and the sale of securities have all in a measure been predicated upon such statements.

This same question of restatement of overheads was before us in Re Northwestern Electric Co. (1940) and there in our Opinion No. 56, 36 PUR (NS) 202, 213, we said:

"We find that the company's attempt to add to plant costs administrative and general expenses previously assigned to operations, not only violates the Commission's system of accounts, and fails to conform to sound principles of accounting, but likewise vitiates the principles of equity in relation to its consumers. The claimed additional administrative and general costs are therefore disallowed."

Our opinion on this subject is unchanged and the amount of $84,328.10 is therefore disallowed.

With respect to the amount of $18,426.63, which the company has included as organization expense, there is nothing in the record to indicate that the company has sustained the burden of proof to justify the allowance of this amount in its plant account. On the contrary, these amounts do not appear on the books of the company, and represent vague theoretical estimates of costs purportedly incurred in 1889. All of the items included therein are conjectural and unsupported, and the major portion, such as preliminary surveys and temporary stations, do not represent organization costs. We find, therefore, that the amount of $18,426.63 must also be disallowed.

Is the Amount of $8,779.81, Representing Certain Over-retirements by the Company Subsequent to the Year 1908, More than Offset by Under-retirements Prior to 1908, Which the Company Failed to Credit to Its Plant Account?

[9] In 1908, respondent removed from its electric plant accounts an amount of $125,500 representing an estimate of unrecorded retirements from date of organization to date of entry. In its study, respondent ascertained certain over-retirements subsequent to 1908 of $8,779.81, but accepted the recorded estimate of $125,500 for under-retirements applying prior to 1908. The company contends that this amount of $8,779.81 should be restored to its plant accounts.

No dispute exists as to the over-retirements of $8,779.81 subsequent to 1908. The issue is confined strictly to the adequacy or inadequacy of an amount of $125,500 which the company estimated to be the amount of its unrecorded retirements from organization to the year 1908. From the record it is clear that this amount is an unsupported estimate which appears on the company's books and which was subsequently written off against either the reserve account or surplus.

As of the date of this unsupported estimate, a reproduction cost appraisal had been prepared by the Railroad and Tax Commissions of Wisconsin. The prices used in this appraisal were admittedly as great or greater than actual

construction costs, and the overheads used therein were substantially in excess of those recorded on the company's books. After writing off this estimate of $125,500, the amount to which the company reduced its plant account was in excess of this contemporaneous appraisal by at least $8,779.81. Obviously, therefore, the company's estimate of $125,500 for under-retirements to 1908 was inadequate to an extent equal to or greater than the subsequent over-retirements of $8,779.81. The application of the inadequacy of the 1908 estimate of unrecorded retirements against subsequent over-retirements is not inconsistent, and the company's attempted restoration of over-retirements must be modified by the inadequacies of previous estimates of under-retirements. We accordingly find that the over-retirements in the amount of $8,779,81 are offset by under-retirements prior to that date, and therefore should not be now included in Account 100.1.

Bond Discount and Expense

[10–12] Respondent in 1889 and 1890 issued $500,000 principal amount of 5 per cent first mortgage gold bonds which were later exchanged for 6 per cent gold bonds. These bonds were sold at a discount of $88,000, of which amount $22,650 was charged to the electric plant accounts on November 15, 1890. The next sale of bonds occurred on July 1, 1891, in the principal amount of $350,000, on which a discount of $70,000 was suffered. Of this amount, $16,000 was charged to electric plant accounts on November 30, 1891. The total of the two discounts charged to electric plant amounted to $38,650. Certain expenses, such as engraving, printing, authentication, and express charges, were also capitalized, amounting to $2,897.50. Of this amount $673.50 was charged to respondent's electric plant accounts.

Although these bonds had a life of thirty years, the entire amount of the discount and expenses, aggregating $160,897.50, were capitalized by respondent, $39,323.50 of the amount being charged to electric plant accounts and the balance allocated to the gas and water plant accounts of respondent.

The net proceeds of these issues were employed to acquire properties at organization and for additions to property shortly thereafter. Respondent divides the bond discount and expense between the amount allocable to the bonds issued to finance purchase of the original properties and those issued to finance 1890 construction. It admits discount estimated at $22,008.50 applicable to the bonds issued to finance the purchase of properties is chargeable to surplus. It contends that the balance of the discount and expense amounting to $17,315 applicable to bonds issued for funds to construct electric property, is includible in plant accounts and is to be written off as the property is retired. Of the $17,315 of bond discount and expense thus allocated to constructed electric plant, respondent computes $17,120.88 as applicable to plant already retired and proposes to charge this amount to depreciation reserve. The balance of $194.12 it proposes to retain as a part of the original cost of electric plant still in service.

The accounting treatment proposed by respondent poses the question as to

whether or not bond discount is a cost of property or a cost of money. If it is to be regarded as a part of the cost of property, then it should be capitalized and retired when the property is removed from service by charges to depreciation reserve. On the other hand if it is to be considered as a part of the cost of money, then it must be treated in the same manner as interest, an expense to be finally discharged when the bonds are retired.

We are of the opinion that it is elementary that bond discount is a part of the cost of money and so related to the coupon rate of interest that, only by considering discount together with the stated coupon rate of bond interest can the actually effective interest rate be determined. Fluctuations in the coupon interest rate have a material effect upon the proceeds derived from a bond issue, and therefore upon the discount or premium thereon.

It would appear that upon the sale of these bonds the company capitalized the full discount and expense applicable to such bonds. It is fundamental that the cost of borrowed funds used for construction purposes should be capitalized only during the period of construction. The amount of electric property remaining from the construction era in which the proceeds of these bonds were employed is negligible. What has actually happened is that practically all of the costs of property retired have been written from the company's plant accounts but the discount and expense has been allowed to remain. As the construction performed with these proceeds was completed substantially within a period of one year, it would follow that the applicable discount and expense capitalized by the company was approximately thirty times the proper amount to be capitalized during the period of construction. However, the company has adduced no evidence as to the amount of such cost during the construction period, and the testimony would indicate that the applicable amount would be negligible. We find, therefore, that no portion of this $39,323.50 should be charged against respondent's reserve for depreciation, and that no portion of the amount should remain in the company's plant accounts. The entire amount of $39,323.50 should be removed from the company's plant account, established in Account 107, Electric Plant Adjustments, and disposed therefrom by a charge to Account 271, Earned Surplus.

Improper Charges to Plant Account

[13] An amount of $1,039.88 constituting improper charges to plant account is made up of an item of $339.13, representing the cost of rewinding line transformers in 1924 and 1925, and an item of $700.75, representing the cost of rebuilding a compensator for a motor generator. The company concedes, and we so find, that these items should have been charged to maintenance at the time they were incurred. Such amounts should be removed from the plant account, established in Account 107, Electric Plant Adjustments, and disposed therefrom by a charge to Account 271, Earned Surplus.

Over-retirement of Transportation Equipment

[14] With respect to an amount of $458 representing an over-retirement of transportation equipment, the com-

pany concedes, and we so find, that this amount should be restored in Account 100.1, Electric Plant in Service, and a credit made to Account 107, Electric Plant Adjustments. Such credit amount in Account 107, Electric Plant Adjustments, should be disposed of by transfer to Account 250, Reserve for Depreciation.

Unrecorded Retirements

[15] Certain unrecorded retirements of signs, lathes, patterns, boilers, and electric stations, aggregating $8,537.26, are offset by an over-retirement of stable and shed in the amount of $826.52, resulting in net unrecorded adjustments and retirements of $7,710.74. The company concedes, and we so find, that this amount should be removed from the plant account, established in Account 107, Electric Plant Adjustments, and disposed therefrom by a charge to Account 250, Reserve for Depreciation.

Contributions in Aid of Construction

[16] An amount of $9,939.91 represents contributions by consumers toward construction work performed by the company, erroneously treated as a reduction of the cost of construction rather than as a contribution. The company concedes, and we so find, that this amount should be restored to the plant account, established as a credit in Account 107, Electric Plant Adjustments, and disposed therefrom by transfer to Account 265, Contributions in Aid of Construction.

Findings

Based upon the evidence in this case, we make the following findings of fact:

1. Respondent, Superior Water, Light & Power Company, is a corporation organized and existing under and by virtue of the laws of the state of Wisconsin.

2. Respondent owns and operates facilities, including transmission lines, for the transmission and sale at wholesale of electric energy which is transmitted from the state of Minnesota into the state of Wisconsin, and consumed by persons other than a transmitter thereof, at points within Wisconsin. Such facilities are facilities for the transmission and sale at wholesale of electric energy in interstate commerce. Respondent is, therefore, a public utility within the meaning of the Federal Power Act.

3. Respondent has included in Account 100.1, Electric Plant in Service, an amount of $300,000, equal to and associated with an amount of capital stock outstanding and allocated to its electric plant account, which stock was issued by the organizers of respondent company to themselves without property having been received therefor. Of such sum $189,900 is characterized by respondent in its study as "Miscellaneous Intangible Plant," Account 303. The balance of $110,100 included in Land and Land Rights, Account 350, is characterized as being the "cost of easements" acquired under a certain grant to the company upon its organization, known as the De-Forest grant.

4. The only electric plant franchises or other intangibles which respondent has owned consist of the following:

(a) A franchise granted by the village (later city) of Superior, Wisconsin, in 1888 to a predecessor corporation of respondent, Daft Electric Light Company, authorizing said com-

pany to construct and operate an electric plant and distribution system in Superior for a term of thirty years from the date of the grant. Such franchise after being devoted to the public service by Daft Electric Light Company was assigned by Daft Electric Light Company to Superior and Duluth Electric Company. On October 31, 1889, Superior and Duluth Electric Company conveyed its entire electric properties, including said franchise, to respondent, through one Robert C. Elliott, in consideration of the sum of $72,309.07. Such purchase price, representing the cost of construction of the plant and works of Superior and Duluth Electric Company, and miscellaneous expenses, plus interest thereon, was charged by respondent to its electric plant account.

(b) A franchise granted by the city of Superior to Superior Arc Light and Power Company, another predecessor of respondent, authorizing the construction of a system of arc and incandescent lighting in the city, which franchise was thereafter acquired by Northwest Electric Construction and Supply Company, and assigned by the latter company to respondent on November 8, 1889, together with a pole line, for the sum of $4,500.

5. The DeForest grant was made on November 18, 1884, by Land and River Improvement Company, the then owner of the town site of West Superior, to Robert W. DeForest and Henry W. DeForest, without cost to the DeForests, and conferred a sole and exclusive right to lay mains for water and gas, and to construct and maintain conduits for steam or compressed air, or the conveying of electric wires for telephone, telegraph, power, or other purposes, in the streets and alleys of said town site of West Superior. On October 18, 1889, the DeForests assigned such grant to respondent.

6. The original cost of the Daft Electric Light Company franchise was nothing. The original cost, if any, of the Superior Arc Light and Power Company franchise was contained in the aforementioned purchase price of $4,500, which sum was charged to respondent's plant account. The original cost of the DeForest grant was $1 as indicated in the instrument of transfer.

7. The $1,000,000 par value of common stock issued upon organization of respondent in 1889 was a disguised gift to the promoters for which respondent received no property, tangible or intangible; and of such amount, the $300,000 included by respondent in its electric plant accounts constitutes a write-up properly includible in Account 107, Electric Plant Adjustments.

8. The company has failed to comply with the reclassification requirements of this Commission's Uniform System of Accounts in that it has erroneously included in Account 100.1, Electric Plant in Service (a) the amount of $102,754.73, of which $84,328.10 represents a restatement in plant accounts of general direct costs and overheads previously charged to operating expenses, and the remainder thereof, or $18,426.63, alleged organization costs not incurred by the company; (b) the amount of $8,779.81, constituting certain over-retirements by the company subsequent to the year 1908, which are more than offset by the amount of certain retirements prior to 1908 which respondent

failed to credit to its plant account; and (c) the amount of $194.12, representing bond discount and expense.

9. The company has failed to comply with the reclassification requirements of this Commission's Uniform System of Accounts in that it has failed to include in Account 100.1, Electric Plant in Service, the amount of $458, representing an over-retirement of transportation equipment.

10. The company has failed to comply with the reclassification requirements of this Commission's Uniform System of Accounts in that it has disposed of certain amounts which properly should have been included in Account 107, Electric Plant Adjustments, pending such time as the Commission approved or directed their disposition by charges to other balance sheet accounts, as follows: (a) the amount of $24,831.62, representing unrecorded retirements in the sum of $7,710.74 and bond discount in the sum of $17,120.88; (b) the amount of $9,939.91, representing contributed property; and (c) the amount of $23,048.38, representing additional bond discount and expense in the sum of $22,008.50, and miscellaneous improper charges to plant account in the sum of $1,039.88.

11. Respondent has failed to show cause why the Commission should not, by order, require it (a) to file reclassification of accounts and original cost studies reflecting the accounting adjustments proposed by the Commission's staff, and (b) to dispose of the $300,000 classified in Account 107, representing that portion of the common stock issued at organization allocated to electric plant.

12. The $300,000 write-up, the $39,323.50 of bond discount and expense, and the $1,039.88 of improper charges to plant should be charged to Account 271, Earned Surplus.

13. The unrecorded and adjusted retirements, amounting to a net of $7,252.74, should be charged against Account 250, Reserve for Depreciation.

14. The credit adjustment of $9,939.91 should be transferred to Account 265, Contributions in Aid of Construction.

An appropriate order, requiring Superior Water, Light & Power Company to file an amended reclassification and original cost study, and to adjust its books of account to conform with our opinion and findings, will be issued.

Order

Upon consideration of the previous orders in this proceeding, the evidence adduced of record, the briefs and other documents filed, and having on this date made and entered its Opinion No. 79 with findings, which is incorporated by reference as a part hereof; and

The attempted restatement in plant account of overheads and theoretical organization costs, in the amount of $102,754.73, and over-retirements subsequent to 1908, in the amount of $8,779.81, having been disapproved; and

The following amounts, aggregating $337,676.21, having been found to be properly classifiable in Account 107, Electric Plant Adjustments:

Common stock issued upon organization		$300,000.00
Discount and expense on bonds		39,323.50
Unrecorded and adjusted retirements (net)	$7,710.74	
Over-retirement of transportation equip. (cr.)	458.00	
		7,252.74
Maintenance costs erroneously capitalized		1,039.88
Contributions in aid of construction		(9,939.91)

The Commission *orders* that:

(A) Superior Water, Light & Power Company enter on its books, as of December 31, 1937, the following reclassification entry:

100.1	Electric plant in service ..	$974,795.14	
107	Electric plant adjustments	337,676.21	
100.6	Electric plant in process of reclassification		$1,312,471.35

(B) Superior Water, Light & Power Company make the following disposition of amounts recorded in Account 107, Electric Plant Adjustments:

(i) Dispose of an amount of $300,000, representing a write-up of plant account by a charge to Account 271, Earned Surplus;

(ii) Dispose of an amount of $39,323.50, representing discount and expense on bonds issued in 1891 or prior thereto and since retired, by a charge to Account 271, Earned Surplus;

(iii) Dispose of an amount of $7,252.74, representing net over and under-retirements, by a charge to Account 250, Reserve for Depreciation;

(iv) Dispose of an amount of $1,039.88, representing items of a maintenance nature capitalized in error, by a charge to Account 271, Earned Surplus;

(v) Dispose of a credit amount of $9,939.91, representing contributions from consumers erroneously credited to construction costs, by transfer to Account 265, Contributions in Aid of Construction;

(C) Superior Water, Light & Power Company file with the Commission, on or before October 1, 1942, certified copies of the entries required by paragraphs (A) and (B) hereof;

(D) Superior Water, Light & Power Company file with the Commission, on or before October 1, 1942, reclassification and original cost studies of electric plant with respect to the amount of $974,795.14 established in Account 100.1, Electric Plant in Service, as required by Electric Plant Accounts Instruction 2-D of the Commission's Uniform System of Accounts and order of May 11, 1937.

NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION, PUBLIC SERVICE COMMISSION

Re Republic Light, Heat & Power Company

[Case 10828.]

Valuation, § 251 — Contributions in aid of construction.

1. Contributions in aid of construction of gas facilities which the company did not do should be excluded from the company's rate base, p. 379.

Expenses, § 37 — Capital amortization — Excess purchase price.

2. A charge representing amortization of the amount in excess of the price which a gas company was permitted to place on its books for property purchased should not be charged to operation, p. 379.

Valuation, § 168 — Capital charges — Establishing continuing property records.

3. Continuing property record expense should be eliminated from capital charges since it is an operating expense, p. 379.

Valuation, § 129 — Administration expenses — Reasonableness.

4. Administration expenses, charged on the theory that it costs as much to administer and supervise $1 of construction cost as it does to administer and supervise $1 of operating expenses, should be excluded from the capital charges of a gas company, p. 379.

Valuation, § 224 — Capital charges — Construction work in progress.

5. An allowance for construction work in progress was included in the rate base of a gas company where the company was not accruing interest on the work and the rate of return would be affected very slightly even if all of the allowance were excluded, p. 379.

Rates, § 303 — Coal surcharge — Price changes.

6. A gas company did not show justification for a rate increase in the form of a coal surcharge where it presented evidence showing only the increased cost of coal and failed to show whether other costs had increased or decreased, since, if rates should be increased because one item of cost has increased, they should also be decreased when one item of cost has decreased, p. 382.

Return, § 92 — Gas company.

7. A return of from 5½ to 5¾ per cent for a gas company was held to be adequate, p. 382.

(MALTBIE, Chairman, concurs.)

[September 23, 1942.]

INVESTIGATION *of proposed gas rate increases in form of coal surcharge; proposed surcharge disapproved.*

APPEARANCES: Gay H. Brown, Counsel (by Richard C. Llop, Principal Attorney), for the Commission; Killeen & Sweeney (by Henry W. Killeen), Buffalo, Attorneys, and John Howell, Buffalo, Attorney, for Republic Light, Heat & Power Co., Inc.; Andrew P. Ronan, Corporation Counsel (by Fred C. Moloney, Assistant Corporation Counsel), Buffalo, for city of Buffalo; Milton E. Koeselau, Buffalo, for the town of Clarence; Albert J. Foley, Dunkirk, City Attorney, for city of Dunkirk; Henry W. Schmidt, North Tonawanda, City Attorney, for city of North Tonawanda; Samuel L. Drayo, Fredonia, Village Attorney, for village of Fredonia; Elton M. Dale, Buffalo, Village Attorney, for village of Kenmore; O. Clyde Joslin, Buffalo, Town Attorney, for town of Tonawanda; Robert P. Galloway, Silver Creek, Attorney, for village of Silver Creek, village of Farnham, town of Hanover, and town of Brandt; Frank S. Sawyer, Fredonia,

Justice of the Peace, for town of Pomfret; H. W. Neumeister, Akron, Plant Manager, for Certain-teed Products Corporation.

BURRITT, Commissioner: The Republic Light, Heat and Power Company (hereinafter called Republic) serves gas generally in the area surrounding the city of Buffalo and extending 40 to 50 miles north, 60 to 70 miles south, and 30 to 60 miles east of the city. It operates in six or seven operating districts in two divisions, natural gas and manufactured gas. Those affected by the filings herein are the Tonawanda and the Niagara Falls districts in the manufactured gas division, and the Batavia and the South Shore districts in the natural gas division. Republic purchases its supply of manufactured gas from the Semet-Solvay Company in Tonawanda and most of its supply of natural gas from its affiliate, The Penn York Natural Gas Company, and from the Iroquois Gas Corporation. It produces a small amount of natural gas from its own shallow wells, and buys small amounts from local producers in its operating territory.

This investigation grew out of the suspension of rate filings of the company which would have increased charges for natural gas for industrial service to certain customers in the Batavia area, and as a result of proposed coal surcharges which would have increased the charges to certain industrial users of manufactured gas in the Tonawanda and Niagara Falls districts. The order suspending rates also contains a broad clause covering the investigation of all rates, charges and classifications of service, rules and regulations, and was included in the order because of the large number of rates which this company has, the differences between these rates which may be discriminatory, and the general form of the rate structure which should be simplified, if possible. Hearings were held at Buffalo on July 1, July 17 and August 14, 1942.

The suspended manufactured gas rates are included in schedules PSC No. 8 and No. 15, the former effective in the Tonawanda area, and the latter in the Niagara Falls area. Both effect increases by virtue of a so-called coal surcharge. The communities affected are the cities of Niagara Falls, Tonawanda and North Tonawanda, the village of Kenmore, and the towns of Tonawanda, Niagara, Wheatfield, Amherst, and Lewiston. According to witness Diels the coal clause does not cause any immediate increase or decrease to any domestic customers, house-heating, space-heating, commercial, or small industrial customers, but will cause increases to five industrial customers in Tonawanda district and eleven in the Niagara Falls district who use more than 1,000,000 cubic feet of gas per month. These include several large customers.

The suspended natural gas rate in schedule PSC No. 11 is applicable to service in the city of Batavia and in the villages of Attica and Alexander. In making this filing the company stated that its intention was to separate domestic customers so that they will all be served under Service Classification No. 1, from commercial and industrial customers who will henceforth be served under Service Classification No. 14 in this district. However, the company has more recently

put the commercial customers back on S. C. No. 1 with the domestic customers. When the company made the filing which was suspended, it also increased from 45 cents to 50 cents per thousand cubic feet the end block of S. C. No. 1. This block applies to the gas used in excess of 6,000 cubic feet. The company further states that no rates to domestic customers will be affected so long as they continue to use the same quantities of gas as formerly. However, due to providing a charge of 55 cents net per thousand cubic feet for all gas over 6,000 cubic feet per month in the proposed S. C. No. 14, industrial customers will be increased. There are nine of these, including one very large customer, the Doehler Die Casting Corporation of Batavia. Doehler will be increased $9,131 and the eight other customers will be increased $380 based upon consumptions during the twelve months ending with June, 1942.

After reviewing the evidence submitted at the first hearing herein this rate, S. C. No. 14, was permitted to become effective on July 13, 1942, subject however to the provisions of § 113 of the Public Service Law which require the company to keep an accurate account of all moneys paid in by reason of the increases with a view to refunding if found too high (see my meorandum July 3, 1942, approved by the Commission July 8, 1942).

Subsequent to the first hearing and on July 18th, the company filed other revisions of its rates in schedule PSC No. 11 in the Batavia natural gas district, affecting the villages of Akron, Alden, and Corfu, and several near-by towns. These change the applicability of the general rate and establish a new classification for industrial service which will increase one customer—Certain-teed Products Corporation—$6,435 and two other customers $28, based upon their use during the twelve months ending with June, 1942. As the proposed changes are the same as previously noted for other parts of the Batavia district, by order dated August 4th, they were also permitted to become effective but under the reparations and refund provisions of § 113. On July 17th the company also filed a cancellation of an industrial rate in the South Shore district, including the city of Dunkirk. The effect of this cancellation according to the company is to transfer customers now on this rate, to the fuel, light, and power rate, increasing 10 customers at least $17,000. By order dated August 4th this filing was also permitted to take effect under the reparation and refund provisions of § 113.

All of the above rates have been investigated in this proceeding, together with the general rate structure of the company, which was criticized by Principal Rates Examiner Bucknam at the hearing on July 1st. However, this report contains recommendations affecting manufactured gas rates only. The recently filed natural gas rates have all been permitted to become effective under the provisions of § 113, and the investigation of these rates has not yet been completed. A further report will be made as soon as possible.

Manufactured Gas Rates

Republic has a contract with Semet-Solvay Company dated June 1, 1936, under which all manufactured gas is purchased for distribution to its customers. Under this contract Republic

pays Semet-Solvay 31 cents per thousand cubic feet for the first 3,000,000 cubic feet of gas delivered during any 24-hour period, and 15 cents per thousand cubic feet for all gas delivered in excess of 3,000,000 cubic feet subject to adjustments for the cost of coal. Under this contract price the average cost to Republic for all manufactured gas purchased from Semet-Solvay for the year ending May, 1942, was 21.4 cents. Because of the higher price of coal the average may be considerably higher during the coming twelve months. The contract contains the following clause, entitled "Changes in the Cost of Coal":

"Said base prices shall be increased or decreased at the rate of 1 cent per thousand cubic feet for each increase above or decrease below $4. of 25 cents in the actual cost of Semet per net ton of coal coked at said Harriet plant during said month; but said base prices shall not be affected by any increase or decrease in the cost of coal in amounts other than whole multiples of 25 cents per net ton."

According to Mr. Diels the following changes have taken place in the price of gas under this contract: An increase of 1 cent per thousand cubic feet in the month of June, 1941; another increase of 1 cent in the month of October, 1941; and a third increase of 1 cent in the month of February, 1942; making a total of 3 cents on an annual purchase of about 3,300,000 thousand cubic feet which is subject to the coal clause.

This 3 cents' increase in the cost of gas is said to cost Republic approximately $99,000 per year. Based on figures for the twelve months ending with April, 1942, customers using more than a million cubic feet per month would be responsible for a cost to the company of about $28,000 per year with the surcharge of 3 cents per thousand cubic feet. It is this amount which the company proposes, by a coal clause filed herein, to pass on to these customers. Mr. Diels also called attention to the fact that the company would have to pay increased taxes on this added revenue amounting to 3½ per cent, of which 3 per cent is relief taxes and ½ per cent state gross income tax and that of the balance remaining it is expected that 45 per cent will have to be paid to the Federal government as income tax. It is not proposed to pass on the remainder of the $99,000 additional coal cost or $71,000 to other customers at this time, and the company plans to absorb this cost.

However, the coal clause will become applicable to other customers if and when the cost of coal reaches $5 per ton. The coal clause applying to the rates charged customers using less than one million cubic feet per month has two bases, one at $4.75 and one at $3.25. The company has absorbed the 3 cents increase in coal cost resulting from the price change from $4 to $4.75 but proposes to charge further increases to customers. If the price of coal falls to $3, the coal clause would become operative in the other direction. The April price of coal to Semet-Solvay was $4.996 and the May price $4.94 per ton.

Despite the fact that the manufactured gas used is derived from exactly the same source—Semet-Solvay—as in Tonawanda and Niagara Falls, no coal clause is proposed to be added to the basic rates applicable to North Buffalo and the village of Kenmore.

However, the coal clause would apply to an optional rate applicable in the village of Kenmore. Gas sold in North Buffalo is 750 BTU mixed gas.

Through Mr. Diels the company presented Exhibit 15 which is a tabulation developed to illustrate the effect of increases in the cost of coal and consequent increases in income taxed upon the gross margin obtained from the 25-cent block in the rates for manufactured gas. This block applies to all use over 1,000,000 cubic feet per month in the Tonawanda district. The industrial rate in the Niagara Falls district has a 25-cent block for usages between 1,000,000 cubic feet and 15,000,000 cubic feet per month, and a charge of 16 cents per thousand cubic feet applies for use over 15,000,000 cubic feet.

Exhibit 15 shows a gross margin of 7.8 cents per thousand cubic feet with coal at a base cost of $4 per ton, a gross margin of 3.85 cents per thousand cubic feet with the present cost of coal, and a margin of 5.5 cents if the proposed coal clause is permitted to become effective. This margin is the difference between the selling price and the incremental cost of the gas plus income taxes. It is apparent that the actual margin is less because of other taxes, lost and unaccounted-for gas, and other costs. Other taxes include city and state relief taxes, and gross earnings tax amounting to 3½ per cent of the selling price. The proposed coal clause, if effective, would not provide as much margin as was provided before the new taxes became effective, according to Mr. Diels. The effect of the increase in Federal taxes is to reduce the gross margin by 2.3 cents per thousand cubic feet, or from 7.8 cents to 5.5 cents per thousand cubic feet.

Earnings of the Company in the Manufactured Gas Division

[1–5] The company was requested to and did present data as to operating expenses and a rate base for its manufactured gas division. Its figures for depreciated property are based partly upon figures prepared by Mr. Rausch, a Commission accountant, which were presented as part of Exhibit 4 in Case 9457 and which show accounting adjustments only. Mr. Rausch's exhibit and working papers in that case were received in this proceeding by reference for the sole purpose of establishing a rate base. The company specifically stated on the record that it used Mr. Rausch's figures brought down to date for the purposes of this proceeding only as a short cut often used in emergencies. It does not sponsor Mr. Rausch's figures and dissents from them vigorously as being much too low. Engineers of the Commission believe they are high in certain respects.

The figures presented by the company are not very complete or entirely satisfactory. They are as shown in the following table, except that working capital and net operating income have been adjusted by me as explained hereinafter. I have also excluded from the rate base contributions in aid of construction which the company did not do. The rate base is not an average for the year but represents the maximum plant in service at June 30, 1942. If an average of plant in service for the past year were used the base would be some $50,000 less.

NEW YORK DEPARTMENT OF PUBLIC SERVICE

Claimed Rate Base as Modified—Manufactured Gas Division as of June 30, 1942

Original cost of gas plant in service as of March 31, 1938 as per Exhibit 4, Case 9457 (Rausch)		$2,879,842
Net additions—per books from March 31, 1938 to June 30, 1942		383,324
Depreciable plant, June 30, 1942		$3,263,166
Working capital		$105,000
Construction work in progress		17,000
Depreciable plant (above)	$3,263,166	
Less Depr. Res. as per Exhibit 4, C. 9457 p. 48 (March 31, 1938)	(629,963)d	
Less net change in reserve, March 31, 1938 to June 30, 1942	(210,545)d	
Depreciated plant, June 30, 1942		2,422,658
Contributions in aid of extensions		(4,741)d
Rate base, June 30, 1942		$2,539,917
Net operating income, 12 months ending June 30, 1942		$126,493
Net income increase from proposed coal clause		14,860
Total net income, 12 months ending June 30, 1942		$141,353
Rate of return—per cent		5.57%

(d)—deduction

The company used $280,000 for working capital which it obtained from operation and maintenance expense less depreciation and taxes divided by eight, plus cash and supplies. This is extremely high. I have used $105,000 which is obtained by the method used by Mr. Mylott and testified to by him in several cases before the Commission, among which are Case 8403, Queens Borough Gas & Electric Company, Case 9403, Orange & Rockland Electric Company and Case 10236, Central New York Power Corporation. I consider the amount adequate.

The depreciation reserve used by the company is the book reserve as adjusted by Mr. Rausch. The reserve as of June 30, 1942, equates to 25.8 per cent of depreciable property.

The net operating income of $126,493 in the above table is $9,000 higher than the company's figure due to the inclusion in expenses by the company of an amortization charge of $9,000 annually and which I have excluded. The company purchased in 1926 the municipal gas plant of the village of Kenmore for $325,000 which was $180,000 in excess of the amount the company was permitted to place on its books for the property. The Commission ordered the company to amortize the $180,000 over twenty years by charging income (below the line) $9,000 annually. In my opinion the amount is not a proper charge to operating expenses.

The $14,860 net income from the proposed coal clause is the amount which would be carried to income after deducting taxes, from the revenue obtained under this clause. This revenue is estimated to be $28,000 annually, based on consumptions during twelve months ending with April, 1942; it is subject to relief and gross earnings taxes of 3½ per cent and under the prospective tax rates 45 per cent of the remainder would be paid

as Federal income tax; after these payments, $14,860 would be left.

The rate of return after making the above adjustments is 5.57 per cent on the company's figures for property as of June 30, 1942. The company's unadjusted figures plus the income from the coal clause give a return of 4.87 per cent.

Engineers of the Commission in connection with their work on the continuing property records of the company (Case 9457) question the inclusion in utility plant of several items which are included in Mr. Rausch's figures and used by the company for its purposes in this proceeding. While these items would result in a substantial deduction to gas plant in service it should be noted that the retirement of a large portion of them would also affect the depreciation reserve figure. The Commission's engineers believe that the net reduction to the manufactured gas rate base resulting from these adjustments would probably approximate $65,000, as of March 31, 1938.

The net additions to plant from March 31, 1938, to June 30, 1942 of $383,324 include capitalization of continuing property record expense. The cost to set up and maintain these records is an operating expense and not a capital charge and should be eliminated.

The additions since March, 1938, also include general administration expense charged on the theory that it cost as much to administer and supervise $1 of construction cost as it does to supervise and administer $1 of operating expenses. Mr. Rausch took out this type of charge to obtain the plant as of March 31, 1938, and the Commission has excluded such charges from utility plant in several cases (e. g. Case 9741, Jamaica Water Supply Company).

These continuing property record and administration expenses may amount to approximately $32,000 of the $383,324 net additions since March, 1938. The Commission's accountants and engineers have had occasion in Case 10055 to examine in detail approximately $72,000 (19 per cent) of the $383,324 and found that 8.35 per cent of the $72,000 consisted of these overheads. If the remainder of the $383,324 contains the same proportion, the $383,324 is excessive by $32,000.

If both the $32,000 and the $65,000 mentioned above are deducted from the depreciated plant, the rate base as of June 30, 1942, would be $2,442,-917. The net income of $141,353 would be 5.79 per cent of this base.

The company included in its rate base $17,000 for construction work in progress. I have left it in because I understand that the company is not accruing interest on this work and since the rate of return would be affected very slightly even if all of it were excluded.

All of these figures pertaining to plant, revenues, and expenses are for the entire manufactured gas division of the company. This division includes approximately 40 natural gas shallow wells used to supply natural gas to approximately 200 customers and to supply the natural gas used for the mixed gas furnished in North Buffalo where the company supplies service to about 160 customers. The revenue for mixed gas for twelve months ending June, 1942, was

only $7,115 from the 160 customers in North Buffalo and $12,467 from the 200 customers supplied with natural gas in the Tonawanda district. The record does not afford a basis for eliminating the plant and expenses pertaining to this natural gas service, but it is believed that such elimination if made would not materially affect the conclusions herein.

Attention was called previously herein to the fact that the coal clause would not apply to a straight-line 65-cent rate which is applicable in the village of Kenmore. This rate applies to about 4,760 customers or 88 per cent of the total customers in the village, but only about 49 per cent or 184,700 thousand cubic feet of the gas sold in the village during the twelve months ended June, 1942, was sold under this rate. Thus about 51 per cent of the gas sold in Kenmore, although only 12 per cent of the customers, will be affected by the coal surcharge.

The above natural gas business, the business in North Buffalo, and the business in Kenmore which is not subject to the coal clause amounted to only 6.1 per cent of the gas sold and 9.5 per cent of the revenues in the entire manufactured gas division for the twelve months ending June, 1942.

There is a good deal of discussion in the record about the relative level of rates in different districts of the manufactured gas division. No attempt is now made to determine either the propriety of the general level of rates in any district or the proper relationship of the rates between districts. The final determination of the general level of rates for this division as well as the proper relationship of rates between districts cannot be definitely determined until the conclusion of the continuing property record case 9457. The investigation in that case is substantially completed, but further hearings must be held and a report made.

Conclusion and Recommendations

[**6, 7**] The company has shown its total revenues and expenses by groups, but there is no detailed analysis of the various items of operating expenses in the record. The company has presented evidence as to the increased cost of coal which is only one element in the cost of gas. Insufficient evidence has been submitted to show whether other costs, such as sales expense, for example, have not been decreased. If rates should be increased because one item of cost has increased, they should also be decreased when one item of cost is lessened. Nor has it been shown that every effort has been made to effect all possible economies.

The company has failed to show that it is entitled to additional revenue in the form of a coal surcharge. Its evidence as to the rate of return earned in the manufactured gas division is neither complete nor satisfactory. Its claimed rate base is too high and probably contains improper elements. When all doubtful elements are eliminated and the small adjustment to income made, the company appears to be earning at least 5½ per cent and up to 5¾ per cent return on the adjusted rate base, which, under present conditions cannot be considered an inadequate return. The company witness uses a 6½ per cent return in Exhibit 19, which is certainly excessive, and claims an

even larger and unreasonable return. On the record made and after making the adjustments required, it is apparent that the Republic Company is already earning a fair return on its manufactured gas property under conditions as they exist today.

I therefore recommend that the proposed coal surcharge provisions in P. S. C. No. 8 effective in the Tonawanda district and P. S. C. No. 15 effective in the Niagrara Falls district be disapproved. The company should be directed to cancel these provisions and an order is submitted accordingly.

The proceeding should be kept open for further investigation and report upon the natural gas rates filed in the Batavia and South Shore Districts.

MALTBIE, Chairman, concurring: "I concur in the recommendation that the company be directed to cancel the provisions under suspension in this proceeding. Commissioner Burritt has mentioned a number of matters in which the company has failed to bear the burden of proof and justify the proposed increases. There are a number of other respects in which they have failed which might be pointed out if it were necessary."

WISCONSIN PUBLIC SERVICE COMMISSION

Roy Warren et al.

v.

City of Wisconsin Rapids

[2-U-1836.]

Discrimination, § 40 — Rates — Classification of customers — Density of areas.

A public utility may classify its customers upon the basis of density within given areas and, without discrimination, charge different rates on the basis of such classification.

[September 22, 1942.]

COMPLAINT *against rates for electric service alleged to be discriminatory; dismissed.*

APPEARANCES: Byron B. Conway, Attorney, Wisconsin Rapids, and Roy Warren, for the complainants; John Jeffrey, Jr., City Attorney, Wisconsin Rapids, for the city of Wisconsin Rapids.

By the COMMISSION: On April 28, 1942, a complaint was filed with this Commission signed by Roy Warren and fifty-four other persons residing in rural territory east of the city of Wisconsin Rapids. This complaint alleged, in effect, that the rates for service furnished or available to the complainants were excessive.

It would serve no useful purpose to present in this opinion a detailed summary of the evidence presented at the hearing in this proceeding. From

that evidence it appears that the city of Wisconsin Rapids is a municipal electric utility which renders service in various rural areas outside the boundary limits of the city. Adjacent to the east limits of the city there is a triangular area or territory in which service is now being rendered at rates the same as the rates charged to customers of the utility residing within the city limits. The eastern limit of this triangular area is at the so-called O'Day road. Extending from a connection with the city's facilities at the O'Day road is a line of the utility which runs for a considerable distance to the eastward. It is called the Kellner-Wauzeecha line and serves territory as far east as in the vicinity of Lake Wauzeecha.

It is the present and potential subscribers to service by means of this line who are the complainants in this proceeding. Rates for service on the Kellner-Wauzeecha line are now in excess of the rates charged in the city or in the triangular area west of the O'Day road. It is claimed, in effect, that this higher charge constitutes an unjust discrimination against the complainants.

The evidence in this case indicates that in 1941 the gross revenues from the customers served by the Kellner-Wauzeecha line amounted to approximately $3,300 and that the utility has an investment in this line of $11,741. Under the utility's urban extension policy, extensions of facilities are made without customer contributions where the cost of the extension, as estimated by the utility, will not be greater than three times the utility's estimate of the annual revenues to be derived therefrom. It appears from the statement of revenues and investment, as above made, that such revenues do not equal one-third of the utility's investment in the Kellner-Wauzeecha line. Furthermore, the above revenues result from the application of rural rates and would have been substantially lower had the urban rates been applied.

At the present time seventy-two customers are being served from this line which is 11.1 miles in length, resulting in an average of 6.5 customers per mile. Seventeen of the seventy-two customers are seasonal customers, and four are schools and churches which enjoy urban rates under the utility's rules.

On the other hand, it appears that in the rural territory between the city limits and the O'Day road there are thirty-five customers served from approximately 1.5 miles of line, resulting in an average customer density of 23.3 customers per mile.

It is well established that it is not unreasonable for a utility to classify its customers upon the basis of their density within given areas. While the particular application of any such classification is of necessity somewhat arbitrary, it cannot be said to be so arbitrary as to be unreasonable. We think that the classification of customers east of the Wisconsin Rapids city limits into urban and rural customers, and the placing of the division line between them at the O'Day road, is not unreasonable or unjust and that, in consequence, the rates of the city of Wisconsin Rapids as an electric utility, which are complained of in this proceeding, are not unjustly discriminatory. It follows that the complaint in this proceeding must be dismissed.

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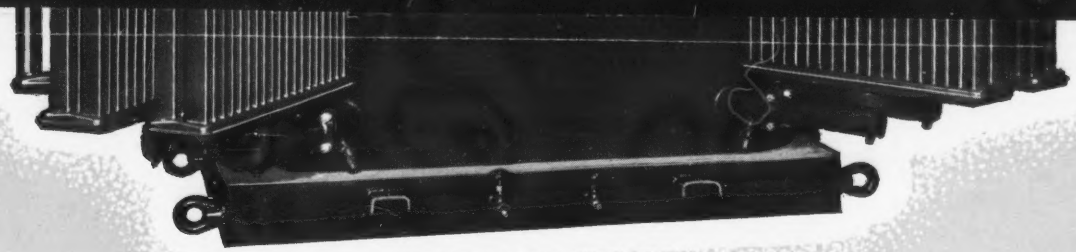

Kuhlman Power Transformers withstand the stress and strain of constant heavy duty

In these days when power-line dependability is so important it is reassuring to have Kuhlman Power Transformers on the job. For in these powerful units is incorporated every construction detail that modern engineering can devise to increase strength and ruggedness. Cores and coils are effectively braced against mechanical distortion. Long bridges prevent wire breakage due to vibration. End-coils are reinforced to prevent failure from surge potentials. Tap changers and tap leads, frame and case, in fact, each component part of these sturdy power transformers is of extra-heavy construction.

Records of installations from coast to coast reveal that Kuhlman Transformers have what it takes to withstand the stress and strain of constant heavy service with a minimum of maintenance.

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KUHLMAN ELECTRIC COMPANY • BAY CITY, MICHIGAN

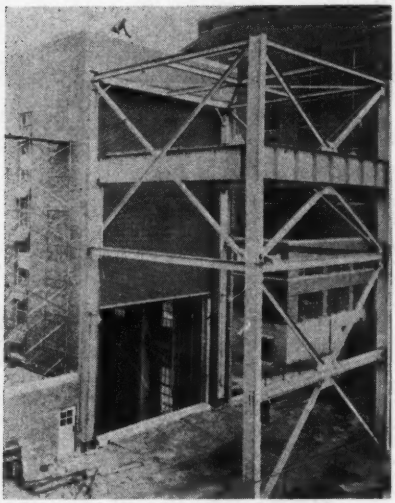
Industrial Progress

Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Equipment Notes

Seven-Story Door

An unusual door installation, consisting of a huge steel rolling door covering almost the entire rear wall of a seven-story building, has recently been completed by the Kinnear Manu-



facturing Company, Columbus, Ohio. This extremely large doorway was designed and built for a specially constructed building in which a 120-ton overhead crane, used in hoisting and moving heavy transformer units, had to pass through the opening.

When opened, the door coils into a compact cylinder in a small housing on the roof of the building, thus eliminating the problem of providing storage space. Further, any complication in the design and construction of the superstructure on which the crane operates was avoided.

A useful safety device automatically halts or reverses the descending door instantly if it contacts any object in its path.

This outsize installation utilizes the regular principles of Kinnear construction. The standard Kinnear interlocking-slat type of fabrication forms a flexible but tough curtain which, when closed, fulfills its role as one wall of the building. Smoothness and precision of operation are attained through spring counterbalancing and electrical control. Durability and ease of repair in this installation are equivalent to the usual Kinnear standards.

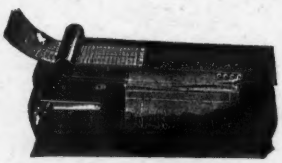
New Carrier Current Air Raid Warning Device

A device which has been developed by J. L. Woodworth in the General Electric Carrier Current Laboratory can be plugged into the house circuit to warn air raid wardens and other civilian defense officials of threatened or actual air raids.

This device, which provides audible and visible warning signals, is designed to operate on 720-cycle carrier current systems now in operation on electric power lines in many U. S. cities. (Carrier current equipment is used to send impulses over the power lines to control electric water heaters, street lights, etc.) By using existing power lines to deliver such warnings, the new device would relieve telephone lines for other purposes.

Time-saver for Handwritten Records

The Com-Pak Register shown in the illustration is a time-saver for use wherever handwritten records are made. Manufactured by



the Egry Register Company, Dayton, Ohio, the Com-Pak can be either manually or electrically operated. It is built in a number of models and sizes.

Wartime Trident Meters

The Neptune Meter Company, New York City, announces that its line of Trident cold water meters and repair parts in all sizes and types are now being manufactured to meet the material restrictions of War Production Board's Water Meter Limitation Order L-154.

All cast iron parts are given a protective

Equipment Notes (Cont'd)

coating of corrosion-resisting paint and steel bolts, studs, nuts and washers have a protective plating.

It is claimed that all parts manufactured will be interchangeable with those of meters already in service in accordance with the established policy of the Neptune company.

Lambert and Thomson meters will not be manufactured for the duration of the war. However, repair parts for these meters will be available and will meet the WPB material restrictions.

Lightweight Pneumatic Drill

A new lightweight pneumatic drill is offered by Ingersoll-Rand Company.

Identified as the Size OOA Drill, it weighs less than two pounds. Powered by an efficient "Multi-Vane" air motor, it is sturdily constructed. A built-in speed regulator can be set for desired performance, and split-second throttle action permits quick, accurate hole-starting. Lubrication is provided by a built-in automatic oiler.

Weighs less than Two Pounds

Because of its light weight and "fit-the-hand" pistol grip, the drill can be used hour after hour without fatigue. A chuck shield offers protection, and also enables the operator to guide the drill more effectively by grasping the shield with the fingers of his free hand.

Further details will be furnished by Ingersoll-Rand Company, 11 Broadway, New York, or any of its branch offices.

Suggestions for Keeping Fire Extinguishers in Service

With practically the entire output of approved fire extinguishers being taken by the Army, the Navy, and manufacturers with top priority ratings, the Safety Research Institute, New York, has issued the following suggestions for keeping fire extinguishers in service for the duration:

1—Place a man upon whom you can depend to see that directions are followed to the letter, in charge of recharging and inspection.

2—Provide him with recharging materials and replacement parts supplied by the manufacturer of the extinguishers.

3—Give him a place to work where plenty of hot and cold water are available.

4—Give him the tools he needs: buckets, mixing sticks, vaseline to place in the threads of the heads of the 2½-gallon extinguishers, etc.

5—Then, hold him strictly accountable for the quality of his work, which will be reflected in the continuing good performance of the extinguishers.

Catalogs & Bulletins

Centrifugal Pumps

Single stage double suction (type S) centrifugal pumps are described in bulletin C-214 issued by Quimby Pump Company, Inc., Newark, N. J.

Quimby Type S centrifugal pumps are of the horizontal shaft, single stage, double suction, horizontally divided casing, enclosed impeller classification and, according to the manufacturer, represent the best possible design, material and workmanship at moderate price.

Quimby pumps of this classification have capacities ranging from 10 to 3600 g.p.m. and heads up to 400 feet.

Maximum heads are based on speed of 3500 r.p.m. and intermediate capacities and heads within the range can be furnished at standard motor speeds.

Vertical centrifugal pumps also built by this manufacturer are described in bulletin C-209.

Wartime Care of Batteries

Valuable hints on the care of storage batteries, whether in industrial use or in automotive service, are given in the current issue of the industrial editon of Exide News, under the heading of "The Great Devourer."

Free copies are available to plant executives, maintenance men, and others who are interested. Address: The Electric Storage Battery Company, 19th St. and Allegheny Ave., Philadelphia, Pa.

"Cable Operation"

"Cable Operation" is the title of a joint report of committee on power distribution, Association of Edison Illuminating Companies, and transmission and distribution committee, Edison Electric Institute.

This report combines the essential features of the annual cable operation reports which in previous years have been prepared separately by the AEIC and EEI committees.

The study of the causes of cable troubles

Catalogs & Bulletins (Cont'd)

has been expanded to cover all troubles reported. Data have also been added on the causes of trouble in joints.

Centrifugal Machines

A complete line of centrifugal machines manufactured by the Sharples Corp., Philadelphia, Pa., is described in two illustrated booklets issued by the corporation.

The super-centrifuge manufactured by the Sharples Corp. restores to normal the dielectric value of used transformer oil. The oil is continuously run from the bottom of the transformer through the centrifugal, and continuously returned to the top of the transformer. This can be done without emptying the transformer. Used switch oil and circuit breaker oil is similarly purified by the centrifugal removal of carbon, sludge, and moisture.

A portable model super-centrifuge can be used for insulating oils and may be transported from one transformer to another.

Manufacturers' Notes

Dodge Service Program

In the interest of its millions of car and truck owners, particularly in view of gasoline rationing, Dodge Division of Chrysler Corporation has released special wartime service instructions to the entire Dodge dealer organization.

The fundamental purpose of the present Dodge service program is to conserve rubber, and also to prolong the usable life of cars and trucks, keeping them at top operating efficiency during that extended life.

New wartime service problems have been studied carefully at the factory, according to Forest H. Akers, vice president of Dodge Division. Dealer and service organizations have been given information which will enable them to get top operating efficiency and the last usable mile out of the cars and trucks in the hands of Dodge owners.

G-E Personnel Changes

Appointment of Thomas J. Mulvey as production manager of General Electric's River Works at Lynn, Mass., has been announced by G. M. Stevens, acting manager.

Since March 1, 1935, Mr. Mulvey has been a member of the manufacturing general department at Schenectady, as a member of the staff of G-E Vice President W. R. Burrows. In January, 1937, Mr. Mulvey was transferred to the Erie, Pa., plant as production manager, holding that position until his new appointment.

R. H. Luebbe has been appointed assistant manager of General Electric Company's appliance & merchandise department, according to an announcement by H. L. Andrews, G-E vice president and manager of this department at Bridgeport, Conn.

Gerard Swope, Jr., counsel of the appliance & merchandise department, has been granted a leave of absence to enter the service of the Navy Department at Washington, D. C.

30,000 Kva Goes Up In Smoke

A most unusual picture, reproduced herewith, shows the results of a lightning discharge to ground when it causes a phase to phase

short. The following account by C. H. McAllister, chief engineer, Tide Water Power Co., Wilmington, N. C., is released by the Railway & Industrial Engineering Co., Greensburg, Pa. R & I E furnished the equipment, a three pole, hi-pressure contact switch, Type "TTL."

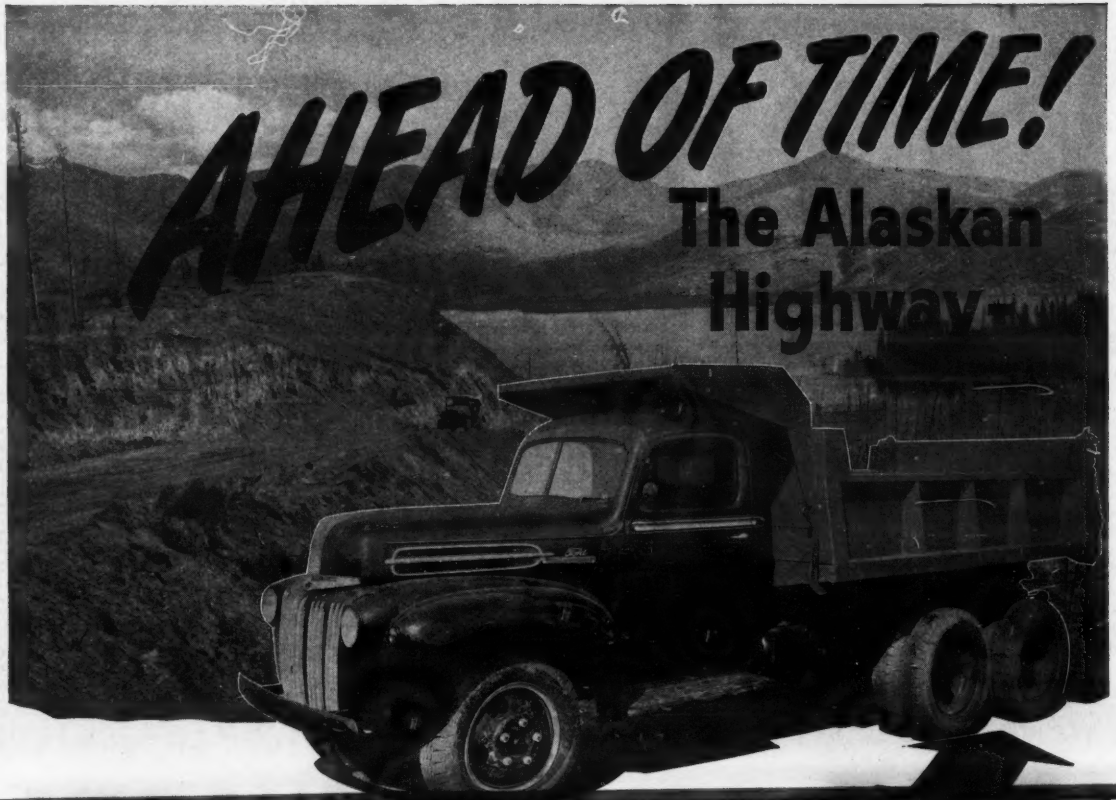
During some construction work in the vicinity and under the transmission line, it was found to be desirable to set the ground relays on very long time setting. At the approach of a thunderstorm, the line was struck with lightning and the flashover to ground occurred on the switch insulator.

The resulting arc remained for some time; long enough to destroy the insulators and to permit a picture to be taken.

At the failure of the insulators, one blade of the switch, standing open, fell across phase and the line relays operated. A combined phase to phase and phase to ground short circuit produced the effect shown and it was estimated that an excess of 30,000 Kva of energy went up in smoke.

A hole about two feet wide and four feet deep was blasted into the ground, and the soil around the pole was still warm 24 hours after the fault.

The switch was put back in service after having been reinsulated and cleaned up. The same parts were placed back in service, having amazingly withstood this terrific punishment.



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A tough assignment in rough country calling for husky, durable, efficient equipment — and right on the job is a big fleet of trucks with

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By means of THORNTON units these trucks have been converted from 1½ to 2-ton vehicles into heavy-duty four-rear-wheel drive trucks handling 6-yard dump bodies.

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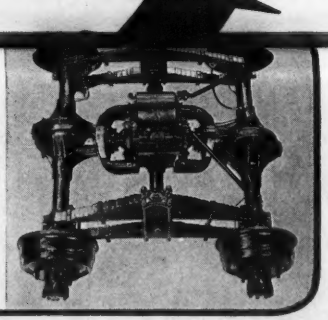

Standard heavy duty trucks are not available today—but here is the answer to that problem. You can convert new or used 1½ to 3-ton trucks to husky, reliable heavy-duty units of more than twice the capacity. They actually do the job better and cost less.

While Uncle Sam still approves, act quickly! Contact your nearest Truckstell-THORNTON dealer or wire the factory direct. Trained men will engineer this equipment to suit YOUR OWN PARTICULAR JOB.

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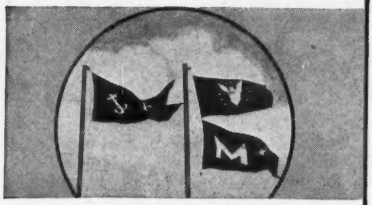
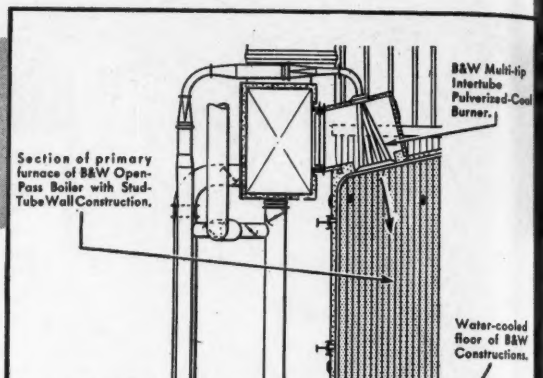
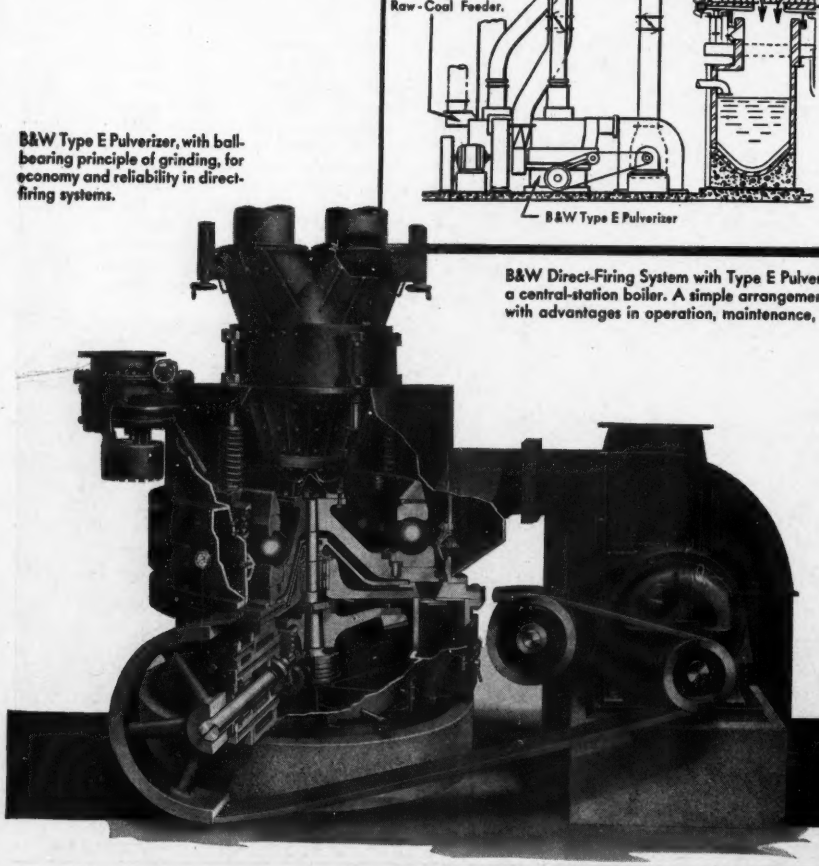


The Maritime Victory flag and "M" burgee now float proudly alongside the Navy "E" at the Barberton Works. Each is an award for "outstanding achievement" and is "an honor not lightly bestowed".



B&W Type E Pulverizer, with ball-bearing principle of grinding, for economy and reliability in direct-firing systems.

B&W Direct-Firing System with Type E Pulverizer applied to a central-station boiler. A simple arrangement of equipment with advantages in operation, maintenance, and reliability.



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Index to Volume XXX

Including the Issues of July 2, 1942
to December 17, 1942

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INDEX

To Vol. XXX of *Public Utilities Fortnightly*

Pages by Issue

Feature Articles

Feature Articles—*Continued*

Illustrations

Frontispieces

Cartoons

Illustrations—*Continued*

Departments

Appendix

Index to Public Utilities Reports

(This section of the magazine, which comprises the decisions, orders, and recommendations of courts and commissions, is too voluminous to be included in this index. These reports are published annually in their entirety, in five bound volumes, together with the Annual Digest; copies may be obtained from the publishers, PUBLIC UTILITIES REPORTS, INC., *Munsey Building, Washington, D. C., upon application.)*

Subject Index

15

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